DEPARTMENT OF HEALTH PROFESSIONS

REQUEST FOR PROPOSALS NO. DEN-2006-10
VIRGINIA BOARD OF DENTISTRY
LAW EXAMINATIONS FOR DENTISTS AND DENTAL HYGIENISTS

ATTACHMENT A

Code of Virginia & Regulations

Chapter 1 of Title 54.1 of the Code of Virginia

General Provision.

Table of Contents

§ 54.1-100. Regulations of professions and occupations.

The right of every person to engage in any lawful profession, trade or occupation of his choice is clearly protected by both the Constitution of the United States and the Constitution of the Commonwealth of Virginia. The Commonwealth cannot abridge such rights except as a reasonable exercise of its police powers when it is clearly found that such abridgment is necessary for the preservation of the health, safety and welfare of the public.

No regulation shall be imposed upon any profession or occupation except for the exclusive purpose of protecting the public interest when:

1. The unregulated practice of the profession or occupation can harm or endanger the health, safety or welfare of the public, and the potential for harm is recognizable and not remote or dependent upon tenuous argument;

2. The practice of the profession or occupation has inherent qualities peculiar to it that distinguish it from ordinary work and labor;

3. The practice of the profession or occupation requires specialized skill or training and the public needs, and will benefit by, assurances of initial and continuing professional and occupational ability; and

4. The public is not effectively protected by other means.

No regulation of a profession or occupation shall conflict with the Constitution of the United States, the Constitution of Virginia, the laws of the United States, or the laws of the Commonwealth of Virginia. Periodically and at least annually, all agencies regulating a profession or occupation shall review such regulations to ensure that no conflict exists.

(1979, c. 408, § 54-1.17; 1988, c. 765.)

§ 54.1-100.1. Department of Commerce continued as Department of Professional and Occupational Regulation.

The Department of Professional and Occupational Regulation, formerly known as the Department of Commerce, is continued, and wherever "Department of Commerce" is used in this Code, it shall mean the Department of Professional and Occupational Regulation. The Board for Professional and Occupational Regulation, formerly known as the Board of Commerce, is continued, and wherever "Board of Commerce" is used in this Code, it shall mean the Board for Professional and Occupational Regulation.

(1993, c. 499.)

§ 54.1-101. Copies of examinations filed by regulatory boards.

A copy of examinations given by regulatory and advisory boards within the Department of Professional and Occupational Regulation and the Department of Health Professions authorized to conduct examinations of applicants for admission to practice or pursue any profession, vocation, trade, calling, or art shall be kept on file at the office of the secretary of each board. A copy of the examination shall be placed on file within ten days

after it is administered, and shall be preserved for at least one year as a public record accessible to any person desiring to examine it during usual business hours. After the expiration of one year from the time the examination is filed, the secretary of the respective board may withdraw and destroy the examination. However, this section shall not be construed or interpreted in a manner to require the filing or release of examinations or other information which would result in compromising the validity or security of future examinations conducted by regulatory or advisory boards of the Department of Professional and Occupational Regulation or the Department of Health Professions. In the event any provision of this section results in a conflict with the provisions of § 54.1-108, the provisions of § 54.1-108 shall prevail.

(Code 1950, § 54-1; 1952, c. 227; 1959, Ex. Sess., c. 94; 1960, c. 10; 1962, c. 13; 1970, c. 623; 1973, c. 284; 1985, c. 448; 1988, c. 765; 1993, c. 499.)

§ 54.1-102. Unlawful procurement of certificate, license or permit; unauthorized possession of examination or answers; penalty.

A. It shall be unlawful:

1. For any person to procure, or assist another to procure, through theft, fraud or other illegal means, a certificate, license or permit, from any state board, or other body charged by law with the responsibility of examining persons desiring to engage in a regulated business or profession, by giving to, or receiving from, any person any information, oral, written or printed, during the administration of the examination, which is intended to, or will, assist any person taking the examination in passing the examination and obtaining the required certificate, license or permit;

2. For any person, other than a member or officer of the board or body, to procure or have in his possession prior to the beginning of an examination, without written authority of a member or officer of the board or body, any question intended to be used by the board or body conducting the examination, or to receive or furnish to any person taking the examination, prior to or during the examination, any written or printed material purporting to be answers to, or aid in answering such questions;

3. For any person to attempt to procure, through theft, fraud or other illegal means, any questions intended to be used by the board or body conducting the examination, or the answers to the questions;

4. To promise or offer any valuable or other consideration to a person having access to the questions or answers as an inducement to procure for delivery to the promisor, or any other person, a copy or copies of any questions or answers.

If an examination is divided into separate parts, each of the parts shall be deemed an examination for the purposes of this section.

B. Any person violating the provisions of subsection A shall be guilty of a Class 2 misdemeanor.

(Code 1950, §§ 54-1.1, 54-1.2; 1988, c. 765.)

§ 54.1-103. Additional training of regulated persons; reciprocity; endorsement.

A. The regulatory boards within the Department of Professional and Occupational Regulation and the Department of Health Professions may promulgate regulations specifying additional training or conditions for individuals seeking certification or licensure, or for the renewal of certificates or licenses.

B. The regulatory boards may enter into agreements with other jurisdictions for the recognition of certificates and licenses issued by other jurisdictions.

C. The regulatory boards are authorized to promulgate regulations recognizing licenses or certificates issued by other states, the District of Columbia, or any territory or possession of the United States as full or partial fulfillment of qualifications for licensure or certification in the Commonwealth.

(1979, c. 408, § 54-1.28; 1983, c. 569; 1988, c. 765; 1990, c. 194; 1993, c. 499.)

§ 54.1-104. Suspension of license, certificate, registration, or authority for dishonor of fee payment; reinstatement.

The Department of Professional and Occupational Regulation and the Department of Health Professions may suspend the license, certificate, registration or authority it has issued any person who submits a check, money draft or similar instrument for payment of a fee required by statute or regulation which is not honored by the bank or financial institution named. The suspension shall become effective ten days following delivery by certified mail of written notice of the dishonor and the impending suspension to such person's address. Upon notification of suspension, the person may reinstate the license, certificate, registration or authority upon payment of the fee and penalties required under statute or regulation. Suspension under this provision shall be exempt from the Administrative Process Act (§ 2.2-4000 et seq.).

(1980, c. 433, § 54-1.2:1; 1988, c. 765; 1993, c. 499.)

§ 54.1-105. Majority of board or panel required to suspend or revoke license, certificate, registration, or multistate licensure privilege; imposition of sanctions.

An affirmative vote of a majority of those serving on a board who are qualified to vote or those serving on a panel of a health regulatory board convened pursuant to § 54.1-2400 shall be required for any action to suspend or revoke a license, certification, registration, or multistate licensure privilege to practice nursing or to impose a sanction on a licensee. However, an affirmative vote of a majority of a quorum of the regulatory board shall be sufficient for summary suspension pursuant to specific statutory authority.

(1988, c. 765; 1992, c. 659; 2004, c. 49.)

§ 54.1-106. Health care professionals rendering services to patients of certain clinics exempt from liability.

A. No person who is licensed or certified by the Boards of/for Audiology and Speech-Language Pathology; Counseling; Dentistry; Medicine; Nursing; Optometry; Opticians; Pharmacy; Hearing Aid Specialists; Psychology; or Social Work or who holds a multistate licensure privilege to practice nursing issued by the Board of Nursing who renders at any site any health care services within the limits of his license, certification or licensure privilege, voluntarily and without compensation, to any patient of any clinic which is organized in

whole or in part for the delivery of health care services without charge, shall be liable for any civil damages for any act or omission resulting from the rendering of such services unless the act or omission was the result of his gross negligence or willful misconduct.

For purposes of this section, any commissioned or contract medical officers or dentists serving on active duty in the United States armed services and assigned to duty as practicing commissioned or contract medical officers or dentists at any military hospital or medical facility owned and operated by the United States government shall be deemed to be licensed pursuant to this title.

B. For the purposes of Article 5 (§ 2.2-1832 et seq.) of Chapter 18 of Title 2.2, any person rendering such health care services who (i) is registered with the Division of Risk Management and (ii) has no legal or financial interest in the clinic from which the patient is referred shall be deemed an agent of the Commonwealth and to be acting in an authorized governmental capacity with respect to delivery of such health care services. The premium for coverage of such person under the Risk Management Plan shall be paid by the Department of Health.

C. For the purposes of this section and Article 5 (§ 2.2-1832 et seq.) of Chapter 18 of Title 2.2, "delivery of health care services without charge" shall be deemed to include the delivery of dental, medical or other health services when a reasonable minimum fee is charged to cover administrative costs.

(1983, c. 25, § 54-1.2:2; 1988, c. 765; 1989, c. 159; 1992, cc. 414, 706; 1995, cc. 509, 531; 1996, c. 748; 1999, c. 834; 2000, cc. 473, 618, 632; 2004, c. 49.)

§ 54.1-106.1. Notification to licensees of the Board of Medicine about immunity for health care services to patients of free clinics.

The Board of Medicine shall provide to its licensees a full description of the protection from civil liability established pursuant to § 54.1-106. Such description shall explain the coverage available under the Division of Risk Management pursuant to subsection B of § 54.1-106.

(2005, c. 134.)

§ 54.1-107. Appointments, terms and removal of members of regulatory boards; citizen members.

All members of regulatory boards shall be citizens of the United States and residents of Virginia. Members shall be appointed by the Governor and may be removed by him as provided in subsection B of § 2.2-108. Any vacancy occurring other than by expiration of terms shall be filled for the unexpired term. Members shall hold office after expiration of their terms until their successors are duly appointed and have qualified. Appointment to fill an unexpired term shall not be considered a full term. All members of regulatory boards appointed by the Governor for terms commencing on or after July 1, 1988, shall be appointed for terms of four years. No member shall serve more than two successive full terms on any regulatory board.

A "citizen member" of a regulatory board shall be a person who (i) is not by training or experience a practitioner of the profession or occupation regulated by the board, (ii) is not the spouse, parent, child, or sibling of such a practitioner, and (iii) has no direct or indirect financial interest, except as a consumer, in the practice of the profession or occupation regulated by the board.

The provisions of this section shall not apply to the Board for Branch Pilots.

(1981, c. 447, § 54-1.18:1; 1988, cc. 42, 765.)

§ 54.1-108. Disclosure of official records.

Official records of the Department of Professional and Occupational Regulation or the Department of Health Professions or any board named in this title shall be subject to the disclosure provisions of the Virginia Freedom of Information Act (§ 2.2-3700 et seq.), except for the following:

1. Examination questions, papers, booklets and answer sheets, which may be disclosed at the discretion of the board administering or causing to be administered such examinations.

2. Applications for admission to examinations or for licensure, and the scoring records maintained by any board or by the Departments on individual licensees or applicants. However, this material may be made available during normal working hours for copying by the subject individual at his expense at the office of the Department or board which possesses the material.

3. Records of active investigations being conducted by the Departments or any board.

(1979, c. 408, § 54-1.41; 1982, c. 207; 1988, c. 765; 1993, c. 499.)

§ 54.1-109. Reviews and appeals.

Any person who has been aggrieved by any action of the Department of Professional and Occupational Regulation, Department of Health Professions, Board for Professional and Occupational Regulation, Board of Health Professions, any regulatory board within the Departments or any panel of a health regulatory board convened pursuant to § 54.1-2400 shall be entitled to a review of such action. Appeals from such actions shall be in accordance with the provisions of the Administrative Process Act (§ 2.2-4000 et seq.).

(1979, c. 408, § 54-1.19; 1988, c. 765; 1992, c. 659; 1993, c. 499.)

§ 54.1-110. Presiding officer; participation of board in hearing; disqualification of board member.

A. Every hearing in a contested case shall be conducted in accordance with the provisions of the Administrative Process Act (§ 2.2-4000 et seq.). When a hearing officer presides, the regulatory board shall determine whether the hearing officer is to hear the case alone or with a panel of a health regulatory board convened pursuant to § 54.1-2400 or whether the board is to hear the case with the hearing officer.

B. A board member shall disqualify himself and withdraw from any case in which he cannot accord fair and impartial consideration. Any party may request the disqualification of any board member by stating with particularity the grounds upon which it is claimed that fair and impartial consideration cannot be accorded. The remaining members of the board or panel shall determine whether the individual should be disqualified.

(1979, c. 408, § 54-1.37; 1986, c. 615; 1988, c. 765; 1992, c. 659.)

§ 54.1-111. Unlawful acts; prosecution; proceedings in equity; civil penalty.

A. It shall be unlawful for any person, partnership, corporation or other entity to engage in any of the following acts:

1. Practicing a profession or occupation without holding a valid license as required by statute or regulation.

2. Making use of any designation provided by statute or regulation to denote a standard of professional or occupational competence without being duly certified or licensed.

3. Making use of any titles, words, letters or abbreviations which may reasonably be confused with a designation provided by statute or regulation to denote a standard of professional or occupational competence without being duly certified or licensed.

4. Performing any act or function which is restricted by statute or regulation to persons holding a professional or occupational license or certification, without being duly certified or licensed.

5. Failing to register as a practitioner of a profession or occupation as required by statute or regulation.

6. Materially misrepresenting facts in an application for licensure, certification or registration.

7. Willfully refusing to furnish a regulatory board information or records required or requested pursuant to statute or regulation.

8. Violating any statute or regulation governing the practice of any profession or occupation regulated pursuant to this title.

9. Refusing to process a request, tendered in accordance with the regulations of the relevant health regulatory board or applicable statutory law, for patient records or prescription dispensing records after the closing of a business or professional practice or the transfer of ownership of a business or professional practice.

Any person who willfully engages in any unlawful act enumerated in this section shall be guilty of a Class 1 misdemeanor. The third or any subsequent conviction for violating this section during a 36-month period shall constitute a Class 6 felony. In addition, any person convicted of any unlawful act enumerated in subdivision 1 through 8 of this subsection, for conduct that is within the purview of any regulatory board within the Department of Professional and Occupational Regulation, may be ordered by the court to pay restitution in accordance with §§ 19.2-305 through 19.2-305.4.

B. In addition to the criminal penalties provided for in subsection A, the Department of Professional and Occupational Regulation or the Department of Health Professions, without compliance with the Administrative Process Act (§ 2.2-4000 et seq.), shall have the authority to enforce the provisions of subsection A and may institute proceedings in equity to enjoin any person, partnership, corporation or any other entity from engaging in any unlawful act enumerated in this section and to recover a civil penalty of at least $200 but not more than $5,000 per violation, with each unlawful act constituting a separate violation; but in no event shall the civil penalties against any one person, partnership, corporation or other entity exceed $25,000 per year. Such proceedings shall be brought in the name of the Commonwealth by the appropriate Department in the circuit

court or general district court of the city or county in which the unlawful act occurred or in which the defendant resides.

C. This section shall not be construed to prohibit or prevent the owner of patient records from (i) retaining copies of his patient records or prescription dispensing records after the closing of a business or professional practice or the transfer of ownership of a business or professional practice or (ii) charging a reasonable fee, in accordance with subsections A and B of § 8.01-413 or subsection J of § 32.1-127.1:03, for copies of patient records, as applicable under the circumstances.

D. This section shall apply, mutatis mutandis, to all persons holding a multistate licensure privilege to practice nursing in the Commonwealth of Virginia.

(1979, c. 408, § 54-1.20; 1988, c. 765; 1993, cc. 129, 499; 1998, c. 470; 2001, c. 544; 2003, cc. 753, 762; 2004, c. 49; 2005, cc. 398, 642, 697.)

§ 54.1-112. Copies of records as evidence.

Copies of all records, documents and other papers of the Department of Professional and Occupational Regulation and the Department of Health Professions and their regulatory boards which bear the official seal and which are duly certified and authenticated in writing on the face of such documents to be true copies by the custodian thereof and by the person to whom the custodian reports shall be received as evidence with like effect as the original records, documents or other papers in all courts of the Commonwealth.

(1988, c. 765; 1993, c. 499.)

§ 54.1-113. Regulatory boards to adjust fees.

A. Following the close of any biennium, when the account for any regulatory board within the Department of Professional and Occupational Regulation or the Department of Health Professions maintained under § 54.1-308 or § 54.1-2505 shows expenses allocated to it for the past biennium to be more than ten percent greater or less than moneys collected on behalf of the board, it shall revise the fees levied by it for certification or licensure and renewal thereof so that the fees are sufficient but not excessive to cover expenses.

B. Nongeneral funds generated by fees collected on behalf of the health regulatory boards and accounted for and deposited into a special fund by the Director of the Department of Health Professions shall be held exclusively to cover the expenses of the health regulatory boards, the Health Practitioners' Intervention Program, and the Department and Board of Health Professions and shall not be transferred to any agency other than the Department of Health Professions, except as provided in §§ 54.1-3011.1 and 54.1-3011.2.

(1981, c. 558, § 54-1.28:1; 1988, c. 765; 1993, c. 499; 2006, c. 631.)

§ 54.1-114. Biennial report.

The Board of Bar Examiners, the Department of Professional and Occupational Regulation and the Department of Health Professions shall submit biennial reports to the Governor and General Assembly on or before November 1 of each even-numbered year. The biennial report shall contain at a minimum the following

information for the Board of Bar Examiners and for each board within the two Departments: (i) a summary of the board's fiscal affairs, (ii) a description of the board's activities, (iii) statistical information regarding the administrative hearings and decisions of the board, (iv) a general summary of all complaints received against licensees and the procedures used to resolve the complaints, and (v) a description of any action taken by the board designed to increase public awareness of board operations and to facilitate public participation. The Department of Health Professions shall include, in those portions of its report relating to the Board of Medicine, a compilation of the data required by § 54.1-2910.1.

(1985, c. 537, § 54-1.2:3; 1988, c. 765; 1993, c. 499; 1998, c. 744; 2004, c. 650.)

§ 54.1-115.

Expired.

§ 54.1-116. Applicants to include social security numbers, or other identifying number; exemption.

A. Every applicant for a license, certificate, registration or other authorization to engage in a business, trade, profession or occupation issued by the Commonwealth pursuant to this title, and every applicant for renewal thereof, shall provide on the application either his social security number or control number issued by the Department of Motor Vehicles pursuant to § 46.2-342. An initial application or renewal application which does not include either identifying number shall not be considered or acted upon by the issuing entity, and no refund of any fees paid with the application shall be granted.

B. Notwithstanding the provisions of subsection A, a health regulatory board of the Department of Health Professions may issue a temporary license or authorization to practice, effective for not longer than 90 days, to an otherwise qualified applicant for a license, certificate or registration who is a foreign national and cannot provide a social security number or control number at the time of application.

(1997, cc. 794, 898; 2003, c. 803.)

§ 54.1-117. Expiration of documents issued to persons in service in the armed services of the United States.

Notwithstanding any contrary provision of law, any license, permit, certificate, or other document, however styled or denominated, that is related to the practice of any business, profession, or calling and issued under this title to any citizen of the Commonwealth shall be held not to have expired during the period of such person's service outside the United States, in the armed services of the United States or as a member of the diplomatic service of the United States, appointed under the Foreign Service Act of 1946, serving outside the United States and 60 days thereafter. However, no extension granted under this section shall exceed five years from the date of expiration of the document.

For the purposes of this section "service in the armed services of the United States" includes active duty service with the regular Armed Forces of the United States or the National Guard or other reserve component.

(2004, c. 975.)

Chapter 24 of Title 54.1 of the Code of Virginia

General Provisions

Table of Content

§ 54.1-2400. General powers and duties of health regulatory boards.

The general powers and duties of health regulatory boards shall be:

1. To establish the qualifications for registration, certification, licensure or the issuance of a multistate licensure privilege in accordance with the applicable law which are necessary to ensure competence and integrity to engage in the regulated professions.

2. To examine or cause to be examined applicants for certification or licensure. Unless otherwise required by law, examinations shall be administered in writing or shall be a demonstration of manual skills.

3. To register, certify, license or issue a multistate licensure privilege to qualified applicants as practitioners of the particular profession or professions regulated by such board.

4. To establish schedules for renewals of registration, certification, licensure, and the issuance of a multistate licensure privilege.

5. To levy and collect fees for application processing, examination, registration, certification or licensure or the issuance of a multistate licensure privilege and renewal that are sufficient to cover all expenses for the administration and operation of the Department of Health Professions, the Board of Health Professions and the health regulatory boards.

6. To promulgate regulations in accordance with the Administrative Process Act (§ 2.2-4000 et seq.) which are reasonable and necessary to administer effectively the regulatory system. Such regulations shall not conflict with the purposes and intent of this chapter or of Chapter 1 (§ 54.1-100 et seq.) and Chapter 25 (§ 54.1-2500 et seq.) of this title.

7. To revoke, suspend, restrict, or refuse to issue or renew a registration, certificate, license or multistate licensure privilege which such board has authority to issue for causes enumerated in applicable law and regulations.

8. To appoint designees from their membership or immediate staff to coordinate with the Intervention Program Committee and to implement, as is necessary, the provisions of Chapter 25.1 (§ 54.1-2515 et seq.) of this title. Each health regulatory board shall appoint one such designee.

9. To take appropriate disciplinary action for violations of applicable law and regulations.

10. To appoint a special conference committee, composed of not less than two members of a health regulatory board or, when required for special conference committees of the Board of Medicine, not less than two members of the Board and one member of the relevant advisory board, to act in accordance with § 2.2-4019 upon receipt of information that a practitioner of the appropriate board may be subject to disciplinary action. The special conference committee may (i) exonerate the practitioner; (ii) reinstate the practitioner; (iii) place the practitioner on probation with such terms as it may deem appropriate; (iv) reprimand the practitioner; (v) modify a previous order; and (vi) impose a monetary penalty pursuant to § 54.1-2401. The order of the special conference committee shall become final 30 days after service of the order unless a written request to the board for a hearing is received within such time. If service of the decision to a party is accomplished by mail, three

days shall be added to the 30-day period. Upon receiving a timely written request for a hearing, the board or a panel of the board shall then proceed with a hearing as provided in § 2.2-4020, and the action of the committee shall be vacated. This subdivision shall not be construed to limit the authority of a board to delegate to an appropriately qualified agency subordinate, as defined in § 2.2-4001, the authority to conduct informal fact-finding proceedings in accordance with § 2.2-4019, upon receipt of information that a practitioner may be subject to a disciplinary action. Criteria for the appointment of an agency subordinate shall be set forth in regulations adopted by the board.

11. To convene, at their discretion, a panel consisting of at least five board members or, if a quorum of the board is less than five members, consisting of a quorum of the members to conduct formal proceedings pursuant to § 2.2-4020, decide the case, and issue a final agency case decision. Any decision rendered by majority vote of such panel shall have the same effect as if made by the full board and shall be subject to court review in accordance with the Administrative Process Act. No member who participates in an informal proceeding conducted in accordance with § 2.2-4019 shall serve on a panel conducting formal proceedings pursuant to § 2.2-4020 to consider the same matter.

12. To issue inactive licenses or certificates and promulgate regulations to carry out such purpose. Such regulations shall include, but not be limited to, the qualifications, renewal fees, and conditions for reactivation of licenses or certificates.

13. To meet by telephone conference call to consider settlement proposals in matters pending before special conference committees convened pursuant to this section, or matters referred for formal proceedings pursuant to § 2.2-4020 to a health regulatory board or a panel of the board or to consider modifications of previously issued board orders when such considerations have been requested by either of the parties.

14. To request and accept from a certified, registered or licensed practitioner or person holding a multistate licensure privilege to practice nursing, in lieu of disciplinary action, a confidential consent agreement. A confidential consent agreement shall be subject to the confidentiality provisions of § 54.1-2400.2 and shall not be disclosed by a practitioner. A confidential consent agreement shall include findings of fact and may include an admission or a finding of a violation. A confidential consent agreement shall not be considered either a notice or order of any health regulatory board, but it may be considered by a board in future disciplinary proceedings. A confidential consent agreement shall be entered into only in cases involving minor misconduct where there is little or no injury to a patient or the public and little likelihood of repetition by the practitioner. A board shall not enter into a confidential consent agreement if there is probable cause to believe the practitioner has (i) demonstrated gross negligence or intentional misconduct in the care of patients or (ii) conducted his practice in such a manner as to be a danger to the health and welfare of his patients or the public. A certified, registered or licensed practitioner who has entered into two confidential consent agreements involving a standard of care violation, within the 10-year period immediately preceding a board's receipt of the most recent report or complaint being considered, shall receive public discipline for any subsequent violation within the 10-year period unless the board finds there are sufficient facts and circumstances to rebut the presumption that the disciplinary action be made public.

15. When a board has probable cause to believe a practitioner is unable to practice with reasonable skill and safety to patients because of excessive use of alcohol or drugs or physical or mental illness, the board, after preliminary investigation by an informal fact-finding proceeding, may direct that the practitioner submit to a mental or physical examination. Failure to submit to the examination shall constitute grounds for disciplinary

action. Any practitioner affected by this subsection shall be afforded reasonable opportunity to demonstrate that he is competent to practice with reasonable skill and safety to patients. For the purposes of this subdivision, "practitioner" shall include any person holding a multistate licensure privilege to practice nursing.

(1988, c. 765; 1992, cc. 659, 890; 1997, cc. 439, 564; 1998, c. 469; 2002, cc. 455, 698; 2003, cc. 753, 762; 2004, cc. 49, 64.)

§ 54.1-2400.01. Certain definition.

As used in this subtitle, "laser surgery" means treatment through revision, destruction, incision or other structural alteration of human tissue using laser technology. Under this definition, the continued use of laser technology solely for nonsurgical purposes of examination and diagnosis shall be permitted for those professions whose licenses permit such use.

(1997, c. 569.)

§ 54.1-2400.02. Information concerning health professionals; posting of addresses on the Internet.

In order to protect the privacy and security of health professionals, the posting of addresses to the on-line licensure lookup or any successor in interest thereof shall only disclose the city or county provided to the Department and shall not include any street, rural delivery route, or post office address. However, the street address of facilities regulated by the Boards of Funeral Directors and Embalmers, Nursing, Pharmacy, and Veterinary Medicine shall be posted.

(2003, c. 310.)

§ 54.1-2400.1. (Effective until October 1, 2005) Mental health service providers; duty to protect third parties; immunity.

A. As used in this section:

"Certified substance abuse counselor" means a person certified to provide substance abuse counseling in a state-approved public or private substance abuse program or facility.

"Client" or "patient" means any person who is voluntarily or involuntarily receiving mental health services or substance abuse services from any mental health service provider.

"Clinical psychologist" means a person who practices clinical psychology as defined in § 54.1-3600.

"Clinical social worker" means a person who practices social work as defined in § 54.1-3700.

"Licensed practical nurse" means a person licensed to practice practical nursing as defined in § 54.1-3000.

"Licensed substance abuse treatment practitioner" means any person licensed to engage in the practice of substance abuse treatment as defined in § 54.1-3500.

"Marriage and family therapist" means a person licensed to engage in the practice of marriage and family therapy as defined in § 54.1-3500.

"Mental health professional" means a person who by education and experience is professionally qualified and licensed in Virginia to provide counseling interventions designed to facilitate an individual's achievement of human development goals and remediate mental, emotional, or behavioral disorders and associated distresses which interfere with mental health and development.

"Mental health service provider" or "provider" refers to any of the following: (i) a person who provides professional services as a certified substance abuse counselor, clinical psychologist, clinical social worker, licensed substance abuse treatment practitioner, licensed practical nurse, marriage and family therapist, mental health professional, physician, professional counselor, psychologist, registered nurse, school psychologist, or social worker; (ii) a professional corporation, all of whose shareholders or members are so licensed; or (iii) a partnership, all of whose partners are so licensed.

"Professional counselor" means a person who practices counseling as defined in § 54.1-3500.

"Psychologist" means a person who practices psychology as defined in § 54.1-3600.

"Registered nurse" means a person licensed to practice professional nursing as defined in § 54.1-3000.

"School psychologist" means a person who practices school psychology as defined in § 54.1-3600.

"Social worker" means a person who practices social work as defined in § 54.1-3700.

B. A mental health service provider has a duty to take precautions to protect third parties from violent behavior or other serious harm only when the client has orally, in writing, or via sign language, communicated to the provider a specific and immediate threat to cause serious bodily injury or death to an identified or readily identifiable person or persons, if the provider reasonably believes, or should believe according to the standards of his profession, that the client has the intent and ability to carry out that threat immediately or imminently. If the third party is a child, in addition to taking precautions to protect the child from the behaviors in the above types of threats, the provider also has a duty to take precautions to protect the child if the client threatens to engage in behaviors that would constitute physical abuse or sexual abuse as defined in § 18.2-67.10. The duty to protect does not attach unless the threat has been communicated to the provider by the threatening client while the provider is engaged in his professional duties.

C. The duty set forth in subsection B is discharged by a mental health service provider who takes one or more of the following actions:

1. Seeks civil commitment of the client under Chapter 2 (§ 37.1-63 et seq.) of Title 37.1.

2. Makes reasonable attempts to warn the potential victims or the parent or guardian of the potential victim if the potential victim is under the age of eighteen.

3. Makes reasonable efforts to notify a law-enforcement official having jurisdiction in the client's or potential victim's place of residence or place of work, or place of work of the parent or guardian if the potential victim is under age eighteen, or both.

4. Takes steps reasonably available to the provider to prevent the client from using physical violence or other means of harm to others until the appropriate law-enforcement agency can be summoned and takes custody of the client.

5. Provides therapy or counseling to the client or patient in the session in which the threat has been communicated until the mental health service provider reasonably believes that the client no longer has the intent or the ability to carry out the threat.

D. A mental health service provider shall not be held civilly liable to any person for:

1. Breaching confidentiality with the limited purpose of protecting third parties by communicating the threats described in subsection B made by his clients to potential third party victims or law-enforcement agencies or by taking any of the actions specified in subsection C.

2. Failing to predict, in the absence of a threat described in subsection B, that the client would cause the third party serious physical harm.

3. Failing to take precautions other than those enumerated in subsection C to protect a potential third party victim from the client's violent behavior.

(1994, c. 958; 1997, c. 901.)

§ 54.1-2400.1. (Effective October 1, 2005) Mental health service providers; duty to protect third parties; immunity.

A. As used in this section:

"Certified substance abuse counselor" means a person certified to provide substance abuse counseling in a state-approved public or private substance abuse program or facility.

"Client" or "patient" means any person who is voluntarily or involuntarily receiving mental health services or substance abuse services from any mental health service provider.

"Clinical psychologist" means a person who practices clinical psychology as defined in § 54.1-3600.

"Clinical social worker" means a person who practices social work as defined in § 54.1-3700.

"Licensed practical nurse" means a person licensed to practice practical nursing as defined in § 54.1-3000.

"Licensed substance abuse treatment practitioner" means any person licensed to engage in the practice of substance abuse treatment as defined in § 54.1-3500.

"Marriage and family therapist" means a person licensed to engage in the practice of marriage and family therapy as defined in § 54.1-3500.

"Mental health professional" means a person who by education and experience is professionally qualified and licensed in Virginia to provide counseling interventions designed to facilitate an individual's achievement of human development goals and remediate mental, emotional, or behavioral disorders and associated distresses which interfere with mental health and development.

"Mental health service provider" or "provider" refers to any of the following: (i) a person who provides professional services as a certified substance abuse counselor, clinical psychologist, clinical social worker, licensed substance abuse treatment practitioner, licensed practical nurse, marriage and family therapist, mental health professional, physician, professional counselor, psychologist, registered nurse, school psychologist, or social worker; (ii) a professional corporation, all of whose shareholders or members are so licensed; or (iii) a partnership, all of whose partners are so licensed.

"Professional counselor" means a person who practices counseling as defined in § 54.1-3500.

"Psychologist" means a person who practices psychology as defined in § 54.1-3600.

"Registered nurse" means a person licensed to practice professional nursing as defined in § 54.1-3000.

"School psychologist" means a person who practices school psychology as defined in § 54.1-3600.

"Social worker" means a person who practices social work as defined in § 54.1-3700.

B. A mental health service provider has a duty to take precautions to protect third parties from violent behavior or other serious harm only when the client has orally, in writing, or via sign language, communicated to the provider a specific and immediate threat to cause serious bodily injury or death to an identified or readily identifiable person or persons, if the provider reasonably believes, or should believe according to the standards of his profession, that the client has the intent and ability to carry out that threat immediately or imminently. If the third party is a child, in addition to taking precautions to protect the child from the behaviors in the above types of threats, the provider also has a duty to take precautions to protect the child if the client threatens to engage in behaviors that would constitute physical abuse or sexual abuse as defined in § 18.2-67.10. The duty to protect does not attach unless the threat has been communicated to the provider by the threatening client while the provider is engaged in his professional duties.

C. The duty set forth in subsection B is discharged by a mental health service provider who takes one or more of the following actions:

1. Seeks involuntary admission of the client under Chapter 8 (§ 37.2-800 et seq.) of Title 37.2.

2. Makes reasonable attempts to warn the potential victims or the parent or guardian of the potential victim if the potential victim is under the age of 18.

3. Makes reasonable efforts to notify a law-enforcement official having jurisdiction in the client's or potential victim's place of residence or place of work, or place of work of the parent or guardian if the potential victim is under age 18, or both.

4. Takes steps reasonably available to the provider to prevent the client from using physical violence or other means of harm to others until the appropriate law-enforcement agency can be summoned and takes custody of the client.

5. Provides therapy or counseling to the client or patient in the session in which the threat has been communicated until the mental health service provider reasonably believes that the client no longer has the intent or the ability to carry out the threat.

D. A mental health service provider shall not be held civilly liable to any person for:

1. Breaching confidentiality with the limited purpose of protecting third parties by communicating the threats described in subsection B made by his clients to potential third party victims or law-enforcement agencies or by taking any of the actions specified in subsection C.

2. Failing to predict, in the absence of a threat described in subsection B, that the client would cause the third party serious physical harm.

3. Failing to take precautions other than those enumerated in subsection C to protect a potential third party victim from the client's violent behavior.

(1994, c. 958; 1997, c. 901; 2005, c. 716.)

§ 54.1-2400.2. Confidentiality of information obtained during an investigation or disciplinary proceeding; penalty.

A. Any reports, information or records received and maintained by any health regulatory board in connection with possible disciplinary proceedings, including any material received or developed by a board during an investigation or proceeding, shall be strictly confidential. A board may only disclose such confidential information:

1. In a disciplinary proceeding before a board or in any subsequent trial or appeal of an action or order, or to the respondent in entering into a confidential consent agreement under § 54.1-2400;

2. To regulatory authorities concerned with granting, limiting or denying licenses, certificates or registrations to practice a health profession, including the coordinated licensure information system, as defined in § 54.1-3030;

3. To hospital committees concerned with granting, limiting or denying hospital privileges if a final determination regarding a violation has been made;

4. Pursuant to an order of a court of competent jurisdiction for good cause arising from extraordinary circumstances being shown;

5. To qualified personnel for bona fide research or educational purposes, if personally identifiable information relating to any person is first deleted. Such release shall be made pursuant to a written agreement to ensure compliance with this section; or

6. To the Health Practitioners' Intervention Program within the Department of Health Professions in connection with health practitioners who apply to or participate in the Program.

B. In no event shall confidential information received, maintained or developed by any board, or disclosed by the board to others, pursuant to this section, be available for discovery or court subpoena or introduced into evidence in any civil action. This section shall not, however, be construed to inhibit an investigation or prosecution under Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2.

C. Any claim of a physician-patient or practitioner-patient privilege shall not prevail in any investigation or proceeding by any health regulatory board acting within the scope of its authority. The disclosure, however, of any information pursuant to this provision shall not be deemed a waiver of such privilege in any other proceeding.

D. This section shall not prohibit the Director of the Department of Health Professions, after consultation with the relevant health regulatory board president or his designee, from disclosing to the Attorney General, or the appropriate attorney for the Commonwealth, investigatory information which indicates a possible violation of any provision of criminal law, including the laws relating to the manufacture, distribution, dispensing, prescribing or administration of drugs, other than drugs classified as Schedule VI drugs and devices, by any individual regulated by any health regulatory board.

E. This section shall not prohibit the Director of the Department of Health Professions from disclosing matters listed in subdivision A 1, A 2, or A 3 of § 54.1-2909; from making the reports of aggregate information and summaries required by § 54.1-2400.3; or from disclosing the information required to be made available to the public pursuant to § 54.1-2910.1.

F. Whenever a complaint or report has been filed about a person licensed, certified, or registered by a health regulatory board and the relevant board has concluded that a disciplinary proceeding will not be instituted, the board may send an advisory letter to the person who was the subject of the complaint or report. The relevant board may also inform the source of the complaint or report that (i) an investigation has been conducted, (ii) the matter was concluded without a disciplinary proceeding, and (iii), if appropriate, an advisory letter from the board has been communicated to the person who was the subject of the complaint or report. In providing such information, the board shall inform the source of the complaint or report that he is subject to the requirements of this section relating to confidentiality and discovery.

G. Orders and notices of the health regulatory boards relating to disciplinary actions shall be disclosed.

H. Any person found guilty of the unlawful disclosure of confidential information possessed by a health regulatory board shall be guilty of a Class 1 misdemeanor.

(1997, c. 698; 1998, c. 744; 1999, c. 888; 2003, cc. 753, 762; 2004, c. 49; 2006, cc. 155, 184.)

§ 54.1-2400.3. Disciplinary actions to be reported.

In addition to the information required by § 54.1-114, the Director shall include in the Department's biennial report for each of the health regulatory boards the number of reports or complaints of misconduct received and the investigations, charges, findings, and sanctions resulting therefrom. The report shall reflect the categories of allegations, kinds of complaints and the rates of disciplinary activity for the various regulated professions and the health regulatory boards having jurisdiction; summaries explaining the reported data shall be included with the report. Further, the report shall specify the number of cases for each profession regulated by a health regulatory board by category of violation, including, but not limited to, standard of care violations, in which (i) a sanction was imposed; (ii) a confidential consent agreement was accepted; and (iii) more than two confidential consent agreements involving a standard of care violation were accepted by the relevant board for the same practitioner in a 10-year period. The information shall be reported only in the aggregate without reference to any individual's name or identifying particulars. In those portions of this report relating to the Board of Medicine, the Director shall include a summary of the data required by § 54.1-2910.1.

The Director shall also include in the Department's biennial report for each health regulatory board (i) case processing time standards for resolving disciplinary cases, (ii) an analysis of the percentage of cases resolved during the last two fiscal years that did not meet such standards, (iii) a six-year trend analysis of the time required to process, investigate, and adjudicate cases, and (iv) a detailed reporting of staffing levels for the six-year period for each job classification that supports the disciplinary process. However, the initial biennial report shall require a four-year trend analysis of the time required to process, investigate, and adjudicate cases and a detailed reporting of staffing levels for the four-year period for each job classification that supports the disciplinary process.

(1997, c. 698; 1998, c. 744; 2003, cc. 753, 762.)

§ 54.1-2400.4. Mental health service providers duty to inform; immunity; civil penalty.

A. Any mental health service provider, as defined in § 54.1-2400.1, shall, upon learning of evidence that indicates a reasonable probability that another mental health provider is or may be guilty of a violation of standards of conduct as defined in statute or regulation, advise his patient of his right to report such misconduct to the Department of Health Professions, hereinafter referred to as the "Department."

B. The mental health service provider shall provide relevant information to the patient, including, but not limited to, the Department's toll-free complaint hotline number for consumer complaints and written information, published by the Department of Health Professions, explaining how to file a report. The mental health service provider shall document in the patient's record the alleged misconduct, the category of licensure or certification, and approximate dates of treatment, if known, of the mental health service provider who will be the subject of the report, and the action taken by the mental health service provider to inform the patient of his right to file a complaint with the Department of Health Professions.

C. Any mental health service provider informing a patient of his right to file a complaint against a regulated person and providing the information required by this section shall be immune from any civil liability or criminal prosecution resulting therefrom unless such person acted in bad faith or with malicious intent.

D. Notwithstanding any other provision of law, any person required to inform a patient of his right to file a complaint against a regulated person pursuant to this section who fails to do so shall be subject to a civil penalty not to exceed $100.

(2000, c. 578.)

§ 54.1-2400.5. Suspension of license, certificate, registration or other authorization issued by a health regulatory board upon delinquency; procedure; reinstatement.

A. An obligee may notify an obligor who is alleged to be in default or delinquent in the payment of a federal- or state-guaranteed educational loan or work-conditional scholarship or work-conditional grant that (i) the obligor has 30 days from the date of receipt of the notice to pay the alleged delinquency or to reach an agreement with the obligee to pay such delinquency and (ii) if payment is not made or an agreement cannot be reached within that time, a petition will be filed by the obligee seeking suspension of any license, certificate, registration or other authorization to engage in a business, trade, profession or occupation issued to the obligor by a health regulatory board within the Department of Health Professions pursuant to this title. The notice shall be sent by certified mail, with proof of actual receipt required.

B. Upon the expiration of 30 days' notice to an obligor who is alleged to be in default or delinquent in the payment of a federal- or state-guaranteed educational loan or work-conditional scholarship, an obligee may petition the circuit court in the jurisdiction in which the obligor resides for an order suspending any license, certificate, registration or other authorization to engage in a business, trade, profession or occupation issued to the obligor by any health regulatory board within the Department of Health Professions pursuant to this title.

C. The court shall not suspend a license, certificate, registration or authorization upon finding that an alternate remedy is available to the obligee that is likely to result in collection of the delinquency. Further, the court may refuse to order the suspension upon finding that (i) suspension would result in irreparable harm to the obligor or employees of the obligor or would not result in collection of the delinquency or (ii) the obligor has made a good-faith effort to reach an agreement with the obligee.

D. If the court finds that (i) none of the conditions provided in subsection C apply, (ii) the obligor is delinquent in the payment of a federal- or state-guaranteed educational loan or work-conditional scholarship, and (iii) he holds a license, certificate, registration or other authority to engage in a business, trade, profession or occupation issued by any health regulatory board within the Department of Health Professions pursuant to this title, it shall order suspension of such license, certificate, registration or authority and shall provide a copy of such order to the relevant health regulatory board within the Department of Health Professions.

Any court order for suspension issued pursuant to this section shall require the obligor to surrender any license, certificate, registration or other such authorization to the relevant health regulatory board within 90 days of the date on which the order is entered.

E. If, at any time after entry of the court order for suspension pursuant to subsection D, the obligor (i) pays the delinquency or (ii) reaches an agreement with the obligee to pay the delinquency and makes at least one payment pursuant to the agreement, then, upon proof of the payment or agreement to pay and at least one payment, the court shall rescind the order and, if the obligor has surrendered any license, certificate, registration or other such authorization, shall order reinstatement of the suspended credential. Such payment shall be proved by notarized statement of payment signed by the obligee.

F. No fee shall be charged by any health regulatory board to a person who obtains reinstatement of a license, certificate, registration or authorization pursuant to this section.

G. The procedure set forth in this section shall be in addition to and not in lieu of any existing or future remedies available to an obligee to collect a delinquent debt from an obligor alleged to be delinquent.

(2003, c. 975.)

§ 54.1-2400.6. Hospitals and other health care institutions required to report disciplinary actions against and certain disorders of health professionals; immunity from liability; failure to report.

A. The chief executive officer and the chief of staff of every hospital or other health care institution in the Commonwealth shall report within 30 days, except as provided in subsection B, to the Director of the Department of Health Professions the following information regarding any person (i) licensed, certified, or registered by a health regulatory board or (ii) holding a multistate licensure privilege to practice nursing or an applicant for licensure, certification or registration unless exempted under subsection E:

1. Any information of which he may become aware in his official capacity indicating that such a health professional is in need of treatment or has been committed or admitted as a patient, either at his institution or any other health care institution, for treatment of substance abuse or a psychiatric illness that may render the health professional a danger to himself, the public or his patients.

2. Any information of which he may become aware in his official capacity indicating, after reasonable investigation and consultation as needed with the appropriate internal boards or committees authorized to impose disciplinary action on a health professional, that there is a reasonable probability that such health professional may have engaged in unethical, fraudulent or unprofessional conduct as defined by the pertinent licensing statutes and regulations. The report required under this section shall be submitted within 30 days of the date that the chief executive officer or chief of staff determines that a reasonable probability exists.

3. Any disciplinary proceeding begun by the institution as a result of conduct involving (i) intentional or negligent conduct that causes or is likely to cause injury to a patient or patients, (ii) professional ethics, (iii) professional incompetence, (iv) moral turpitude, or (v) substance abuse. The report required under this section shall be submitted within 30 days of the date of written communication to the health professional notifying him of the initiation of a disciplinary proceeding.

4. Any disciplinary action taken during or at the conclusion of disciplinary proceedings or while under investigation, including but not limited to denial or termination of employment, denial or termination of privileges or restriction of privileges that results from conduct involving (i) intentional or negligent conduct that causes or is likely to cause injury to a patient or patients, (ii) professional ethics, (iii) professional incompetence, (iv) moral turpitude, or (v) substance abuse. The report required under this section shall be submitted within 30 days of the date of written communication to the health professional notifying him of any disciplinary action.

5. The voluntary resignation from the staff of the health care institution or voluntary restriction or expiration of privileges at the institution of any health professional while such health professional is under investigation or is the subject of disciplinary proceedings taken or begun by the institution or a committee thereof for any reason related to possible intentional or negligent conduct that causes or is likely to cause injury to a patient or patients, medical incompetence, unprofessional conduct, moral turpitude, mental or physical impairment, or substance abuse.

Any report required by this section shall be in writing directed to the Director of the Department of Health Professions, shall give the name and address of the person who is the subject of the report and shall fully describe the circumstances surrounding the facts required to be reported. The report shall include the names and contact information of individuals with knowledge about the facts required to be reported and the names and contact information of individuals from whom the hospital or health care institution sought information to substantiate the facts required to be reported. All relevant medical records shall be attached to the report if patient care or the health professional's health status is at issue. The reporting hospital or health care institution shall also provide notice to the Department that it has submitted a report to the National Practitioner Data Bank under the Health Care Quality Improvement Act (42 U.S.C. § 11101 et seq.). The reporting hospital or health care institution shall give the health professional who is the subject of the report an opportunity to review the report. The health professional may submit a separate report if he disagrees with the substance of the report.

This section shall not be construed to require the hospital or health care institution to submit any proceedings, minutes, records or reports that are privileged under § 8.01-581.17, except that the provisions of § 8.01-581.17 shall not bar (i) any report required by this section or (ii) any requested medical records that are necessary to investigate unprofessional conduct reported pursuant to this subtitle or unprofessional conduct that should have been reported pursuant to this subtitle. Under no circumstances shall compliance with this section be construed to waive or limit the privilege provided in § 8.01-581.17. No person or entity shall be obligated to report any matter to the Department if the person or entity has actual notice that the same matter has already been reported to the Department.

B. Any report required by this section concerning the commitment or admission of such health professional as a patient shall be made within five days of when the chief administrative officer learns of such commitment or admission.

C. The State Health Commissioner or the Commissioner of the Department of Social Services shall report to the Department any information of which their agencies may become aware in the course of their duties that a health professional may be guilty of fraudulent, unethical or unprofessional conduct as defined by the pertinent licensing statutes and regulations.

D. Any person making a report by this section, providing information pursuant to an investigation or testifying in a judicial or administrative proceeding as a result of such report shall be immune from any civil liability alleged to have resulted therefrom unless such person acted in bad faith or with malicious intent.

E. Medical records or information learned or maintained in connection with an alcohol or drug prevention function that is conducted, regulated, or directly or indirectly assisted by any department or agency of the United States shall be exempt from the reporting requirements of this section to the extent that such reporting is in violation of 42 U.S.C. § 290dd-2 or regulations adopted thereunder.

F. Any person who fails to make a report to the Department as required by this section shall be subject to a civil penalty not to exceed $25,000 assessed by the Director. The Director shall report the assessment of such civil penalty to the Commissioner of the Department of Health. Any person assessed a civil penalty pursuant to this section shall not receive a license or certification or renewal of such unless such penalty has been paid pursuant to § 32.1-125.01. The Medical College of Virginia Hospitals and the University of Virginia Hospitals shall not receive certification pursuant to § 32.1-137 or Article 1.1 (§ 32.1-102.1 et seq.) of Chapter 4 of Title 32.1 unless such penalty has been paid.

(Code 1950, § 32-137.1; 1977, c. 639; 1978, c. 541, § 54-325.1; 1979, cc. 720, 727; 1986, cc. 303, 434; 1988, c. 765, § 54.1-2906; 1994, c. 234; 2000, c. 77; 2003, cc. 456, 753, 762; 2004, cc. 49, 64.)

§ 54.1-2400.7. Practitioners treating other practitioners for certain disorders to make reports; immunity from liability.

A. Every practitioner in the Commonwealth who is registered, certified, or licensed by a health regulatory board or who holds a multistate licensure privilege to practice nursing who treats professionally any person registered, certified, or licensed by a health regulatory board or who holds a multistate licensure privilege shall report, unless exempted by subsection C hereof, to the Director of the Department of Health Professions whenever any such health professional is treated for mental disorders, chemical dependency or alcoholism, unless the attending practitioner has determined that there is a reasonable probability that the person being treated is competent to continue in practice or would not constitute danger to himself or to the health and welfare of his patients or the public.

B. Any person making a report required by this section or testifying in a judicial or administrative proceeding as a result of such report shall be immune from any civil liability alleged to have resulted there from unless such person acted in bad faith or with malicious intent.

C. Medical records or information learned or maintained in connection with an alcohol or drug abuse prevention function that is conducted, regulated, or directly or indirectly assisted by any department or agency of the United States shall be exempt from the reporting requirements of this section to the extent that such reporting is in violation of 42 U.S.C. § 290dd-2 or regulations adopted thereunder.

(Code 1950, § 54-317.2; 1966, c. 166; 1973, c. 529, § 54-317.3; 1974, c. 555; 1977, c. 639; 1978, c. 541; 1986, c. 434; 1988, c. 765, § 54.1-2907; 1996, cc. 937, 980; 2004, cc. 49, 64.)

§ 54.1-2400.8. Immunity for reporting.

In addition to the immunity for reporting as provided by §§ 54.1-2400.6 and 54.1-2400.7, any person (i) making a report regarding the conduct or competency of a health care practitioner as required by law or regulation, (ii) making a voluntary report to the appropriate regulatory board or to the Department of Health Professions regarding the unprofessional conduct or competency of any practitioner licensed, certified, or registered by a health regulatory board, or (iii) providing information pursuant to an investigation or testifying in a judicial or administrative proceeding as a result of such reports shall be immune from any civil liability resulting therefrom unless such person acted in bad faith or with malicious intent.

(2004, c. 64; 2005, c. 932.)

§ 54.1-2401. Monetary penalty.

Any person licensed, registered or certified or issued a multistate licensure privilege by any health regulatory board who violates any provision of statute or regulation pertaining to that board and who is not criminally prosecuted, may be subject to the monetary penalty provided in this section. If the board or any special conference committee determines that a respondent has violated any provision of statute or regulation pertaining to the board, it shall determine the amount of any monetary penalty to be imposed for the violation, which shall

not exceed $5,000 for each violation. The penalty may be sued for and recovered in the name of the Commonwealth. All such monetary penalties shall be deposited in the Literary Fund.

(1980, c. 678, § 54-961; 1988, c. 765; 1992, c. 659; 1997, c. 564; 2003, cc. 753, 762; 2004, c. 49.)

§ 54.1-2402. Citizen members on health regulatory boards.

Citizen members appointed to boards within the Department of Health Professions after July 1, 1986, shall participate in all matters. Of the citizen members first appointed to boards with two citizen members, one shall be appointed for a term of two years and one for the maximum term established for members of the respective board. On boards with one citizen member, the citizen member initially appointed shall be appointed for the maximum term established for members of that board. The provisions of this section relating to terms of citizen members on such boards shall not apply to the Board of Medicine or to the Board of Funeral Directors and Embalmers. For the purposes of this section, "citizen member" shall have the meaning provided in § 54.1-107.

(1986, c. 464, § 54-950.3; 1988, cc. 66, 765.)

§ 54.1-2402.1. Appointments, removals, and limitation of terms of members of regulatory boards.

Except as otherwise expressly provided, members shall be appointed by the Governor and may be removed by him as provided in subsection B of § 2.2-108. Any vacancy occurring other than by expiration of term shall be filled for the unexpired term. Members shall hold office after expiration of their terms until their successors are duly appointed and have qualified.

All members of regulatory boards appointed by the Governor for terms commencing on or after July 1, 1988, shall be appointed for terms of four years. No members shall serve more than two successive full terms on any regulatory board.

(1988, c. 42, § 54-950.4.)

§ 54.1-2403. Certain advertising prohibited.

No person licensed by one of the boards within the Department shall use any form of advertising that contains any false, fraudulent, misleading or deceptive statement or claim.

(1987, c. 199, § 54-959.1; 1988, c. 765.)

§ 54.1-2403.01. Routine component of prenatal care.

As a routine component of prenatal care, every practitioner licensed pursuant to this subtitle who renders prenatal care, including any holder of a multistate licensure privilege to practice nursing, regardless of the site of such practice, shall advise every pregnant woman who is his patient of the value of testing for Human Immunodeficiency Viruses (HIV) infection and shall request of each such pregnant woman consent to such testing. The confidentiality provisions of § 32.1-36.1, the informed consent stipulations, test result disclosure conditions, and appropriate counseling requirements of § 32.1-37.2 shall apply to any HIV testing conducted pursuant to this section. Practitioners shall counsel all pregnant women with HIV-positive test results about the

dangers to the fetus and the advisability of receiving treatment in accordance with the then current Centers for Disease Control recommendations for HIV-positive pregnant women. Any pregnant woman shall have the right to refuse consent to testing for HIV infection and any recommended treatment. Documentation of such refusal shall be maintained in the patient's medical record.

(1995, c. 309; 2004, c. 49.)

§ 54.1-2403.1. Protocol for certain medical history screening required.

A. As a routine component of every pregnant woman's prenatal care, every practitioner licensed pursuant to this subtitle who renders prenatal care, including any holder of a multistate licensure privilege to practice nursing, regardless of the site of such practice, shall establish and implement a medical history protocol for screening pregnant women for substance abuse to determine the need for a specific substance abuse evaluation. The medical history protocol shall include, but need not be limited to, a description of the screening device and shall address abuse of both legal and illegal substances. The medical history screening may be followed, as necessary and appropriate, with a thorough substance abuse evaluation.

B. The results of such medical history screening and of any specific substance abuse evaluation which may be conducted shall be confidential and, if the woman is enrolled in a treatment program operated by any facility receiving federal funds, shall only be released as provided in federal law and regulations. However, if the woman is not enrolled in a treatment program or is not enrolled in a program operated by a facility receiving federal funds, the results may only be released to the following persons:

1. The subject of the medical history screening or her legally authorized representative.

2. Any person designated in a written release signed by the subject of the medical history screening or her legally authorized representative.

3. Health care providers for the purposes of consultation or providing care and treatment to the person who was the subject of the medical history screening.

C. The results of the medical history screening required by this section or any specific substance abuse evaluation which may be conducted as part of the prenatal care shall not be admissible in any criminal proceeding.

D. Practitioners shall advise their patients of the results of the medical history screening and specific substance abuse evaluation, and shall provide such information to third-party payers as may be required for reimbursement of the costs of medical care. However, such information shall not be admissible in any criminal proceedings. Practitioners shall advise all pregnant women whose medical history screenings and specific substance abuse evaluations are positive for substance abuse of appropriate treatment and shall inform such women of the potential for poor birth outcomes from substance abuse.

(1992, c. 428; 2004, c. 49.)

§ 54.1-2403.2. Record storage.

A. Medical records, as defined in § 42.1-77, may be stored by computerized or other electronic process or microfilm, or other photographic, mechanical, or chemical process; however, the stored record shall identify the location of any documents or information that could not be so technologically stored. If the technological storage process creates an unalterable record, a health care provider licensed, certified, registered or issued a multistate licensure privilege by a health regulatory board within the Department shall not be required to maintain paper copies of medical records that have been stored by computerized or other electronic process, microfilm, or other photographic, mechanical, or chemical process. Upon completing such technological storage, paper copies of medical records may be destroyed in a manner that preserves the patient's confidentiality. However, any documents or information that could not be so technologically stored shall be preserved.

B. Notwithstanding the authority given in this section to store patient records in the form of microfilm, prescription dispensing records maintained in or on behalf of any pharmacy registered or permitted in Virginia shall only be stored in compliance with §§ 54.1-3410, 54.1-3411 and 54.1-3412.

(1994, c. 390; 1998, c. 470; 2004, c. 49.)

§ 54.1-2403.3. Medical records; ownership; provision of copies.

Medical records maintained by any health care provider as defined in § 32.1-127.1:03 shall be the property of such health care provider or, in the case of a health care provider employed by another health care provider, the property of the employer. Such health care provider shall release copies of any such medical records in compliance with § 32.1-127.1:03 or § 8.01-413, if the request is made for purposes of litigation, or as otherwise provided by state or federal law.

(1995, c. 754; 1997, c. 682; 1998, c. 470.)

§ 54.1-2404. Itemized statements required upon request.

Upon the request of any of his patients, any health care provider licensed or certified by any of the boards within the Department, except in the case of health care services as defined in Chapter 43 (§ 38.2-4300 et seq.) of Title 38.2, shall provide to such patient an itemized statement of the charges for the services rendered to the requesting patient regardless of whether a bill for the services which are the subject of the request has been or will be submitted to any third party payor including medical assistance services or the state/local hospitalization program.

(1990, c. 590.)

§ 54.1-2405. Transfer of patient records in conjunction with closure, sale, or relocation of practice; notice required.

A. No person licensed, registered, or certified by one of the health regulatory boards under the Department shall transfer records pertaining to a current patient in conjunction with the closure, sale or relocation of a professional practice until such person has first attempted to notify the patient of the pending transfer, by mail, at the patient's last known address, and by publishing prior notice in a newspaper of general circulation within the provider's practice area, as specified in § 8.01-324.

The notice shall specify that, at the written request of the patient or an authorized representative, the records or copies will be sent, within a reasonable time, to any other like-regulated provider of the patient's choice or provided to the patient pursuant to § 32.1-127.1:03. The notice shall also disclose whether any charges will be billed by the provider for supplying the patient or the provider chosen by the patient with the originals or copies of the patient's records. Such charges shall not exceed the actual costs of copying and mailing or delivering the records.

B. For the purposes of this section:

"Current patient" means a patient who has had a patient encounter with the provider or his professional practice during the two-year period immediately preceding the date of the record transfer.

"Relocation of a professional practice" means the moving of a practice located in Virginia from the location at which the records are stored at the time of the notice to another practice site that is located more than 30 miles away or to another practice site that is located in another state or the District of Columbia.

(1992, c. 759; 2003, cc. 912, 917; 2004, c. 53.)

§ 54.1-2406. Treatment records of practitioners.

No records of the identity, diagnosis, prognosis, or treatment of any practitioner of any profession regulated by any of the regulatory boards within the Department of Health Professions obtained by the Department or any health regulatory board from a health care provider or facility that is treating or has treated such practitioner for drug addiction or chronic alcoholism shall be disclosed except:

1. In a disciplinary hearing before a health regulatory board or in any subsequent trial or appeal of a board action or order;

2. To licensing or disciplinary authorities of other jurisdictions or to hospital committees located within or outside this Commonwealth which are concerned with granting, limiting, or denying a physician hospital privileges if a final determination regarding disciplinary action has been made; or

3. Pursuant to an order of a court of competent jurisdiction.

(1992, c. 808.)

§ 54.1-2407. Requirements for human research.

Any person licensed, registered, or certified by any health regulatory board who engages in the conduct of human research, as defined in § 32.1-162.16, shall comply with the provisions of Chapter 5.1 (§ 32.1-162.16 et seq.) of Title 32.1. Failure to so comply shall constitute unprofessional conduct.

(1992, c. 603.)

§ 54.1-2408. Disqualification for license, certificate or registration.

A board within the Department of Health Professions shall refuse to admit a candidate to any examination and shall refuse to issue a license, certificate or registration to any applicant if the candidate or applicant has had his license, certificate or registration to practice the profession or occupation revoked or suspended, and has not had his license, certificate or registration to so practice reinstated by the jurisdiction which revoked or suspended his license, certificate or registration.

(1993, c. 991.)

§ 54.1-2408.1. Summary suspension of licenses, certificates, registrations, or multistate licensure privilege; allegations to be in writing.

A. Any health regulatory board may suspend the license, certificate, registration or multistate licensure privilege of any person holding a license, certificate, registration, or licensure privilege issued by it without a hearing simultaneously with the institution of proceedings for a hearing, if the relevant board finds that there is a substantial danger to the public health or safety which warrants this action. A board may meet by telephone conference call when summarily suspending a license, certificate, registration, or licensure privilege if a good faith effort to assemble a quorum of the board has failed and, in the judgment of a majority of the members of the board, the continued practice by the individual constitutes a substantial danger to the public health or safety. Institution of proceedings for a hearing shall be provided simultaneously with the summary suspension. The hearing shall be scheduled within a reasonable time of the date of the summary suspension.

B. Allegations of violations of this title shall be made in writing to the relevant health regulatory board.

(1997, c. 556; 2004, c. 49.)

§ 54.1-2408.2. Three-year minimum period for reinstatement after revocation.

When the certificate, registration or license of any person certified, registered or licensed by one of the health regulatory boards has been revoked, the board may, after three years and upon the payment of a fee prescribed by the Board, consider an application for reinstatement of a certificate, registration or license in the same manner as the original certificates, registrations or licenses are granted. The reinstatement of a certificate, registration or license shall require the affirmative vote of three-fourths of the members at a meeting. In the discretion of the board, such reinstatement may be granted without further examination.

(2003, cc. 753, 762.)

§ 54.1-2409. Mandatory suspension or revocation; reinstatement; hearing for reinstatement.

A. Upon receipt of documentation by a court or agency, state or federal, that a person licensed, certified, or registered by a board within the Department of Health Professions has had his license, certificate, or registration to practice the same profession or occupation revoked or suspended in another jurisdiction and has not had his license, certificate, or registration to so practice reinstated within that jurisdiction, or has been convicted of a felony or has been adjudged incapacitated, the Director of the Department shall immediately suspend, without a hearing, the license, certificate, or registration of any person so disciplined, convicted or adjudged. The Director shall notify such person or his legal guardian, conservator, trustee, committee, or other representative of the suspension in writing to his address on record with the Department. Such notice shall include a copy of the

documentation from such court or agency, certified by the Director as the documentation received from such court or agency. Such person shall not have the right to practice within this Commonwealth until his license, certificate, or registration has been reinstated by the Board.

B. The clerk of any court in which a conviction of a felony or an adjudication of incapacity is made, who has knowledge that a person licensed, certified, or registered by a board within the Department has been convicted or found incapacitated, shall have a duty to report these findings promptly to the Director.

C. When a conviction has not become final, the Director may decline to suspend the license, certificate, or registration until the conviction becomes final if there is a likelihood of injury or damage to the public if the person's services are not available.

D. Any person whose license, certificate, or registration has been suspended as provided in this section may apply to the board for reinstatement of his license, certificate, or registration. Such person shall be entitled to a hearing not later than the next regular meeting of the board after the expiration of 60 days from the receipt of such application, and shall have the right to be represented by counsel and to summon witnesses to testify in his behalf. The Board may consider other information concerning possible violations of Virginia law at such hearing, if reasonable notice is given to such person of the information.

The reinstatement of the applicant's license, certificate, or registration shall require the affirmative vote of three-fourths of the members of the board at the hearing. The board may order such reinstatement without further examination of the applicant, or reinstate the license, certificate, or registration upon such terms and conditions as it deems appropriate.

E. Pursuant to the authority of the Board of Nursing provided in Chapter 30 (§ 54.1-3000 et seq.) of this title, the provisions of this section shall apply, mutatis mutandis, to persons holding a multistate licensure privilege to practice nursing.

(1993, c. 991; 1997, c. 801; 2002, c. 455; 2004, c. 49; 2006, c. 367.)

§ 54.1-2409.1. Criminal penalties for practicing certain professions and occupations without appropriate license.

Any person who, without holding a current valid license or multistate licensure privilege, issued by a regulatory board pursuant to this title (i) performs an invasive procedure for which a license or multistate licensure privilege is required; (ii) administers, prescribes, sells, distributes, or dispenses a controlled drug; or (iii) practices a profession or occupation after having his license or multistate licensure privilege to do so suspended or revoked shall be guilty of a Class 6 felony.

(1994, c. 722; 2004, c. 49.)

§ 54.1-2409.2. Board to set criteria for determining need for professional regulation.

The Board of Health Professions shall study and prepare a report for submission to the Governor and the General Assembly by October 1, 1997, containing its findings and recommendations on the appropriate criteria

to be applied in determining the need for regulation of any health care occupation or profession. Such criteria shall address at a minimum the following principles:

1. Promotion of effective health outcomes and protection of the public from harm.

2. Accountability of health regulatory bodies to the public.

3. Promotion of consumers' access to a competent health care provider workforce.

4. Encouragement of a flexible, rational, cost-effective health care system that allows effective working relationships among health care providers.

5. Facilitation of professional and geographic mobility of competent providers.

6. Minimization of unreasonable or anti-competitive requirements that produce no demonstrable benefit.

The Board in its study shall analyze and frame its recommendations in the context of the total health care delivery system, considering the current and changing nature of the settings in which health care occupations and professions are practiced. It shall recognize in its recommendations the interaction of the regulation of health professionals with other areas of regulation including, but not limited to, the following:

1. Regulation of facilities, organizations, and insurance plans;

2. Health delivery system data;

3. Reimbursement issues;

4. Accreditation of education programs; and

5. Health workforce planning efforts.

The Board in its study shall review and analyze the work of publicly and privately sponsored studies of reform of health care workforce regulation in other states and nations. In conducting its study the Board shall cooperate with the state academic health science centers with accredited professional degree programs.

(1996, c. 532.)

§ 54.1-2409.3. Participation of advisory boards in disciplinary proceedings.

Notwithstanding any provision of law to the contrary, whenever a disciplinary proceeding involves a respondent who holds a license or certificate authorizing the practice of a profession represented by a statutorily created advisory board whose members are appointed by the Governor, a member of such advisory board shall sit as a full voting member on any special conference committee, informal fact-finding panel or formal hearing panel pursuant to Article 3 (§ 2.2-4018 et seq.) of Chapter 40 of Title 2.2, and §§ 54.1-2400, 54.1-2408.2, or § 54.1-2917.

(2002, c. 698.)

Chapter 25 of Title 54.1 of the Code of Virginia

Department of Health Professions

Table of Contents

§ 54.1-2500. Definitions.

As used in this chapter, unless the context requires a different meaning:

"Board" means the Board of Health Professions.

"Department" means the Department of Health Professions.

"Director" means the Director of the Department of Health Professions.

"Health regulatory board" or "regulatory board" means any board included within the Department of Health Professions as provided in § 54.1-2503.

(1977, c. 579, § 54-950; 1980, c. 678; 1983, c. 115; 1985, c. 448; 1986, c. 564; 1987, c. 686; 1988, c. 765.)

§ 54.1-2501. Department established.

The Department of Health Professions established within the executive branch, shall be under the supervision and management of the Director of the Department.

(1977, c. 579, § 54-950.1; 1984, c. 720; 1986, c. 564; 1988, c. 765.)

§ 54.1-2502. Use of consultants in investigations.

The Department of Health Professions shall establish a roster of consultants in health care specialties for each health regulatory board, as required. The Department shall contract with each consultant to assist in the investigation and evaluation of violations of statute or regulations of the health regulatory boards and to provide expert testimony as necessary in any subsequent administrative hearing. The cost of the consultants shall be paid by the board for which the services are provided.

Any consultant under contract to the Department shall have immunity from civil liability resulting from any communication, finding, opinion or conclusion made in the course of his duties unless such person acted in bad faith or with malicious intent.

(1986, c. 564, § 54-960.1; 1988, c. 765.)

§ 54.1-2503. Boards within Department.

In addition to the Board of Health Professions, the following boards are included within the Department: Board of Audiology and Speech-Language Pathology, Board of Counseling, Board of Dentistry, Board of Funeral Directors and Embalmers, Board of Long-Term Care Administrators, Board of Medicine, Board of Nursing, Board of Optometry, Board of Pharmacy, Board of Physical Therapy, Board of Psychology, Board of Social Work and Board of Veterinary Medicine.

(1977, c. 579, § 54-950.2; 1980, c. 678; 1983, c. 115; 1987, c. 686; 1988, c. 765; 1992, cc. 706, 841; 1993, c. 869; 2000, cc. 473, 688; 2005, cc. 610, 924.)

§ 54.1-2504. Appointment of Director.

The Director of the Department of Health Professions shall be appointed by the Governor, subject to confirmation by the General Assembly, to serve at the pleasure of the Governor.

(1986, c. 564, § 54-954.1; 1988, c. 765.)

§ 54.1-2505. Powers and duties of Director of Department.

The Director of the Department shall have the following powers and duties:

1. To supervise and manage the Department;

2. To perform or consolidate such administrative services or functions as may assist the operation of the boards;

3. To prepare, approve and submit to the Governor, after consultation with the boards, all requests for appropriations and be responsible for all expenditures pursuant to appropriations;

4. To provide such office facilities as will allow the boards to carry out their duties;

5. To employ personnel as required for the proper performance of the responsibilities of the Department subject to Chapter 29 (§ 2.2-2900 et seq.) of Title 2.2 within the limits of appropriations made by law;

6. To receive all complaints made against regulated health care professionals;

7. To develop administrative policies and procedures governing the receipt and recording of complaints;

8. To monitor the status of actions taken under the auspices of the boards regarding complaints until the closure of each case;

9. To provide investigative and such other services as needed by the boards to enforce their respective statutes and regulations;

10. To provide staff to assist in the performance of the duties of the Board of Health Professions;

11. To collect and account for all fees to be paid into each board and account for and deposit the moneys so collected into a special fund from which the expenses of the health regulatory boards, the Health Practitioners' Intervention Program, and the Department and Board of Health Professions shall be paid. Such fees shall be held exclusively to cover the expenses of the health regulatory boards, the Health Practitioners' Intervention Program, and the Department and Board of Health Professions and shall not be transferred to any agency other than the Department of Health Professions, except as provided in §§ 54.1-3011.1 and 54.1-3011.2;

12. To make and enter into all contracts and agreements necessary or incidental to the performance of his duties and the execution of his powers, including, but not limited to, contracts with the United States, other states, agencies and governmental subdivisions of the Commonwealth;

13. To accept grants from the United States government, its agencies and instrumentalities, and any other source. The Director shall have the power to comply with conditions and execute agreements as may be necessary, convenient or desirable;

14. To promulgate and revise regulations necessary for the administration of the Department and such regulations as are necessary for the implementation of the Health Practitioners' Intervention Program pursuant to Chapter 25.1 (§ 54.1-2515 et seq.) of this title and subdivision 19 of this section;

15. To report promptly, after consultation with the presiding officer of the appropriate health regulatory board or his designee, to the Attorney General or the appropriate attorney for the Commonwealth any information the Department obtains which, upon appropriate investigation, indicates, in the judgment of the Director, that a person licensed by any of the health regulatory boards has violated any provision of criminal law, including the laws relating to manufacturing, distributing, dispensing, prescribing or administering drugs other than drugs classified as Schedule VI drugs. When necessary, the Attorney General or the attorney for the Commonwealth shall request that the Department of Health Professions or the Department of State Police conduct any subsequent investigation of such report. Upon request and affidavit from an attorney for the Commonwealth, the Director shall provide documents material to a criminal investigation of a person licensed by a health regulatory board; however, peer review documents shall not be released and shall remain privileged pursuant to § 8.01-581.17. For the purpose of this section, the terms manufacturing, distributing, dispensing, prescribing or administering drugs shall not include minor administrative or clerical errors which do not affect the inventory of drugs required by Chapter 34 (§ 54.1-3400 et seq.) of this title and do not indicate a pattern of criminal behavior;

16. To keep records of the names and qualifications of registered, certified or licensed persons;

17. To exercise other powers and perform other duties required of the Director by the Governor;

18. To issue subpoenas in accordance with the Administrative Process Act (§ 2.2-4000 et seq.) for any informal fact finding or formal proceeding within the jurisdiction of the Department or any regulatory board;

19. To establish, and revise as necessary, a comprehensive health practitioners' intervention program pursuant to Chapter 25.1 (§ 54.1-2515 et seq.) of this title;

20. To establish, and revise as necessary, with such federal funds, grants, or general funds as may be appropriated or made available for this program, the Prescription Monitoring Program pursuant to Chapter 25.2 (§ 54.1-2519 et seq.) of this title; and

21. To assess a civil penalty against any person who is not licensed by a health regulatory board for failing to report a violation pursuant to § 54.1-2400.6 or § 54.1-2909.

(1977, c. 579, § 54-955; 1980, c. 678; 1983, c. 528; 1986, c. 564; 1988, cc. 266, 765; 1997, c. 439; 2002, c. 481; 2003, cc. 753, 762; 2004, c. 64; 2006, c. 631.)

§ 54.1-2506. Enforcement of laws by Director and investigative personnel; authority of investigative personnel and Director.

A. The Director and investigative personnel appointed by him shall be sworn to enforce the statutes and regulations pertaining to the Department, the Board, and the health regulatory boards and shall have the authority to investigate any violations of those statutes and regulations and to the extent otherwise authorized by law inspect any office or facility operated, owned or employing individuals regulated by any health regulatory board. The Director or his designee shall have the power to subpoena witnesses and issue subpoenas requiring the production of patient records, business records, papers, and physical or other evidence in the course of any investigation.

B. All investigative personnel shall be vested with the authority to (i) administer oaths or affirmations for the purpose of receiving complaints of violations of this subtitle, (ii) serve and execute any warrant, paper or process issued by any court or magistrate, the Board, the Director or in his absence a designated subordinate, or by any regulatory board under the authority of the Director, and (iii) request and receive criminal history information under the provisions of § 19.2-389.

C. The Director shall have the authority to issue summonses for violations of statutes and regulations governing the unlicensed practice of professions regulated by the Department. The Director may delegate such authority to investigators appointed by him. In the event a person issued such a summons fails or refuses to discontinue the unlawful acts or refuses to give a written promise to appear at the time and place specified in the summons, the investigator may appear before a magistrate or other issuing authority having jurisdiction to obtain a criminal warrant pursuant to § 19.2-72.

(1980, c. 678, § 54-960; 1986, c. 564; 1988, c. 765; 1993, c. 869; 2003, cc. 753, 762.)

§ 54.1-2506.01. Investigation of reported violations.

The Department shall investigate all complaints that are within the jurisdiction of the relevant health regulatory board received from (i) the general public and (ii) all reports received pursuant to §§ 54.1-2400.6, 54.1-2400.7, 54.1-2709.3, 54.1-2709.4, 54.1-2908, or § 54.1-2909.

(2003, cc. 753, 762; 2004, c. 64.)

§ 54.1-2506.1. Submission of required information.

A. The Department is authorized to require individuals applying for initial licensure and individuals who are licensed to practice medicine, osteopathic medicine, dentistry, or to practice as a physician assistant, nurse practitioner or dental hygienist, to provide information in addition to that which is required to determine the individual's qualifications to be licensed. Such additional information shall identify the individual's specialty and subspecialty; credentials and certifications issued by professional associations, institutions and boards; and locations of practice and number of hours spent practicing at each practice location. Such information shall be collected and maintained by the Department for manpower planning purposes in cooperation with agencies and institutions of the Commonwealth and shall be released by the Department only in the aggregate without reference to any licensee's name or other individual identifying particulars. Prior to collecting any information described in this section from individual licensees, the Department shall first attempt to obtain from other sources information sufficient for manpower planning purposes.

B. For the purpose of expediting the dissemination of information about a public health emergency, the Department is authorized to require certain licensed, certified or registered persons to report any email address, telephone number and facsimile number that may be used to contact such person in the event of a public health emergency. In the event of an animal health emergency, the Department shall provide to the State Veterinarian the email addresses, telephone numbers and facsimile numbers that may be used to contact licensed veterinarians.

Such email addresses, telephone numbers and facsimile numbers shall not be published, released or made available for any other purpose by the Department or the State Veterinarian.

The Director, in consultation with the Department of Health and the Department of Emergency Management, shall adopt regulations that identify those licensed, certified or registered persons to which the requirement to report shall apply and the procedures for reporting.

(1994, c. 853; 1997, c. 806; 2003, c. 602; 2005, c. 55.)

§ 54.1-2506.2. Protection of escrow funds, etc., held by persons licensed by any of the health regulatory boards.

Whenever funds are held in escrow, in trust, or in some other fiduciary capacity by a person licensed by any of the health regulatory boards and the Director or investigative personnel appointed by him have reason to believe that such person is not able or is unwilling to adequately protect such funds or the interest of any person therein, the Director may file a petition with any court of record having equity jurisdiction over such person or any of the funds held by such person stating the facts upon which he relies. The court may temporarily enjoin further activity by such person and take such further action as shall be necessary to conserve, protect and disburse the funds involved, including the appointment of a receiver. If a receiver is appointed his expenses and a reasonable fee as determined by the court shall be paid by such person.

(1995, c. 738.)

§ 54.1-2507. Board of Health Professions; membership, appointments, and terms of office.

The Board of Health Professions shall consist of one member from each health regulatory board appointed by the Governor, and five members to be appointed by the Governor from the Commonwealth at large. No member of the Board of Health Professions who represents a health regulatory board shall serve as such after he ceases to be a member of a board. The members appointed by the Governor shall be subject to confirmation by the General Assembly and shall serve for four-year terms.

(1977, c. 579, § 54-951; 1985, c. 448; 1986, c. 564; 1988, c. 765.)

§ 54.1-2508. Chairman; meetings of Board; quorum.

The chairman of the Board of Health Professions shall be elected by the Board from its members. The Board shall meet at least once quarterly and may hold additional meetings as necessary to perform its duties. A majority of the Board shall constitute a quorum for the conduct of business.

(1977, c. 579, § 54-953; 1980, c. 678; 1986, c. 564; 1988, c. 765.)

§ 54.1-2509. Reimbursement of Board members for expenses.

All members of the Board shall be compensated in accordance with § 2.2-2813 from the funds of the Department.

(1977, c. 579, § 54-954; 1980, cc. 678, 728; 1986, c. 564; 1988, c. 765.)

§ 54.1-2510. Powers and duties of Board of Health Professions.

The Board of Health Professions shall have the following powers and duties:

1. To evaluate the need for coordination among the health regulatory boards and their staffs and report its findings and recommendations to the Director and the boards;

2. To evaluate all health care professions and occupations in the Commonwealth, including those regulated and those not regulated by other provisions of this title, to consider whether each such profession or occupation should be regulated and the degree of regulation to be imposed. Whenever the Board determines that the public interest requires that a health care profession or occupation which is not regulated by law should be regulated, the Board shall recommend to the General Assembly a regulatory system to establish the appropriate degree of regulation;

3. To review and comment on the budget for the Department;

4. To provide a means of citizen access to the Department;

5. To provide a means of publicizing the policies and programs of the Department in order to educate the public and elicit public support for Department activities;

6. To monitor the policies and activities of the Department, serve as a forum for resolving conflicts among the health regulatory boards and between the health regulatory boards and the Department and have access to departmental information;

7. To advise the Governor, the General Assembly and the Director on matters relating to the regulation or deregulation of health care professions and occupations;

8. To make bylaws for the government of the Board of Health Professions and the proper fulfillment of its duties under this chapter;

9. To promote the development of standards to evaluate the competency of the professions and occupations represented on the Board;

10. To review and comment, as it deems appropriate, on all regulations promulgated or proposed for issuance by the health regulatory boards under the auspices of the Department. At least one member of the relevant board shall be invited to be present during any comments by the Board on proposed board regulations;

11. To review periodically the investigatory, disciplinary and enforcement processes of the Department and the individual boards to ensure the protection of the public and the fair and equitable treatment of health professionals;

12. To examine scope of practice conflicts involving regulated and unregulated professions and advise the health regulatory boards and the General Assembly of the nature and degree of such conflicts;

13. To receive, review, and forward to the appropriate health regulatory board any departmental investigative reports relating to complaints of violations by practitioners of Chapter 24.1 (§ 54.1-2410 et seq.) of this subtitle;

14. To determine compliance with and violations of and grant exceptions to the prohibitions set forth in Chapter 24.1 of this subtitle; and

15. To take appropriate actions against entities, other than practitioners, for violations of Chapter 24.1 of this subtitle.

(1977, c. 579, § 54-955.1; 1980, c. 678; 1984, cc. 447, 720, 734; 1986, c. 564; 1988, c. 765; 1993, c. 869.)

Code of Virginia

Chapter 25.1 of Title 54.1 – Health Practitioner Intervention Program

TABLE OF CONTENTS

§ 54.1-2515. Definitions.

As used in this chapter, unless the context requires a different meaning:

"Contract" means a written agreement between a practitioner and the Intervention Program Committee providing the terms and conditions of program participation or a written agreement entered into by the Director for the implementation of intervention services.

"Disciplinary action" means any proceeding which may lead to a fine, probation, or to reprimand, restriction, revocation, suspension, denial or other order relating to the license, certificate or registration of a health care practitioner by a health regulatory board.

"Impairment" means a physical or mental disability, including, but not limited to substance abuse, that substantially alters the ability of a practitioner to practice his profession with safety to his patients and the public.

"Intervention Program Committee" means the seven-member group of licensed, certified or registered practitioners appointed by the Director to supervise the operation of the program, at least one of whom shall be licensed to practice medicine or osteopathy in Virginia and who shall be engaged in active clinical practice. All members of the Committee shall be knowledgeable about impairment and rehabilitation, particularly as related to health care practitioners.

"Practitioner" means any individual regulated by any health regulatory board listed in § 54.1-2503.

(1997, c. 439.)

§ 54.1-2516. Program established; practitioner participation; disciplinary action stayed under certain conditions.

A. By January 1, 1998, the Director of the Department of Health Professions shall establish a comprehensive health practitioners' intervention program, providing an alternative to disciplinary action. The Director shall promulgate such regulations as are necessary for the implementation of this program after consulting with the various health regulatory boards.

The Director may, in consultation and coordination with the Intervention Program Committee, enter into contracts as may be necessary for the implementation of intervention services. Such services may include education, intervention, assessment, referral, and monitoring of impaired practitioners.

When evaluating such contracts, the Director shall consider the utilization of programs, as appropriate, that have been established by professional organizations for peer assistance of impaired practitioners.

The Program's operating costs, including any contractual obligations for services, shall be funded by special dedicated revenues consistent with the provisions of §§ 54.1-113, 54.1-2400, and 54.1-2505.

Any intervention program for individuals licensed or certified by the Board of Medicine, and any contract for the implementation of intervention services with respect to any such individuals, shall be subject to the prior approval of that Board.

B. Any health practitioner who has an impairment as defined in this chapter, may, on a voluntary basis, participate in the Program regardless of whether the impairment constitutes grounds for disciplinary action.

C. Disciplinary action shall be stayed upon entry of the practitioner in the Program under the following conditions:

1. No report of a possible violation of law or regulation has been made against the practitioner other than impairment or the diversion of controlled substances for personal use and such use does not constitute a danger to patients or clients.

2. The practitioner has entered the Program by written contract with the Intervention Program Committee.

3. Disciplinary action against the practitioner has not previously been stayed in accordance with this section.

4. The practitioner remains in compliance with such terms, testing, treatment and other conditions as may be specified in the contract with the Intervention Program Committee.

5. The Intervention Program Committee has consulted with the designated representative of the relevant health regulatory board.

(1997, c. 439.)

§ 54.1-2517. Powers and duties of the Intervention Program Committee; certain meetings, decisions to be excepted from the Freedom of Information Act; confidentiality of records; immunity from liability.

A. The Intervention Program Committee shall have the following powers and duties:

1. To determine, in accordance with the regulations, eligibility to enter into the Program;

2. To determine, in accordance with the regulations, those Program participants who are eligible for stayed disciplinary action;

3. To enter into written contracts with practitioners which may include, among other terms and conditions, withdrawal from practice or limitations on the scope of the practice for a period of time;

4. To report to the Director and the health regulatory boards as necessary on the status of applicants for and participants in the Program; and

5. To report to the Director, at least annually, on the performance of the Program.

B. Records of the Intervention Program Committee, to the extent such records identify individual practitioners in the intervention program, shall be privileged and confidential, and shall not be disclosed consistent with the Virginia Freedom of Information Act (§ 2.2-3700 et seq.). Such records shall be used by the Committee only in the exercise of the proper functions of the Committee as set forth in this chapter and shall not be public records nor shall such records be subject to court order, except as provided in subdivision C 4 below, or be subject to discovery or introduction as evidence in any civil, criminal, or administrative proceedings except those conducted by a health regulatory board.

C. Notwithstanding the provisions of subsection B above and of subdivision 11 of § 2.2-3705.5, the Committee may disclose such records relative to an impaired practitioner only:

1. When disclosure of the information is essential to the intervention, treatment or rehabilitation needs of the impaired practitioner;

2. When release of the information has been authorized in writing by the impaired practitioner;

3. To a health regulatory board within the Department of Health Professions; or

4. When an order by a court of competent jurisdiction has been granted, upon a showing of good cause therefor, including the need to avert a substantial risk of death or serious bodily harm. In assessing good cause, the court shall weigh the public interest and the need for disclosure against the injury to the patient, to the physician-patient relationship, and to the treatment services. Upon the granting of such order, the court, in determining the extent to which any disclosure of all or any part of any record is necessary, shall impose appropriate protections against unauthorized disclosures.

D. Pursuant to subdivision A 25 of § 2.2-3711, the proceedings of the Committee which in any way pertain or refer to a specific practitioner who may be, or who is actually, impaired and who may be or is, by reason of such impairment, subject to disciplinary action by the relevant board shall be excluded from the requirements of the Freedom of Information Act (§ 2.2-3700 et seq.) and may be closed. Such proceedings shall be privileged and confidential.

E. The members of the Committee shall be immune from liability resulting from the exercise of the powers and duties of the Committee as provided in § 8.01-581.13.

(1997, c. 439; 1999, cc. 703, 726; 2004, c. 690.)

§ 54.1-2518. Investigation by Department or other authorized official; prosecution for violations of law.

This chapter shall not be construed to inhibit an investigation into the conduct of a practitioner by the Department of Health Professions or any other authorized agency, including, but not limited to, law-enforcement or health regulatory agencies, or to prohibit the prosecution of any practitioner for any violation of law.

(1997, c. 439.)

Chapter 27 of Title 54.1 of the Code of Virginia

Dentistry

Table of Contents

§ 54.1-2700. Definitions.

As used in this chapter, unless the context requires a different meaning:

"Board" means the Board of Dentistry;

"Dental hygiene" means cleaning and polishing teeth and assisting the members of the dental profession in providing oral health care and oral health education to the public;

"Dental hygienist" means a person trained in the practice of and practicing dental hygiene;

"Dentist" means a person who has been awarded a degree in and is licensed to practice dentistry;

"Dentistry" means the evaluation, diagnosis, prevention, and treatment, through surgical, nonsurgical or related procedures, of diseases, disorders, and conditions of the oral cavity and the maxillofacial, adjacent and associated structures and their impact on the human body;

"License" means the document issued to an applicant upon completion of requirements for admission to practice dentistry or dental hygiene in this Commonwealth or upon registration for renewal of license to continue the practice of dentistry or dental hygiene in this Commonwealth;

"Maxillofacial" means pertaining to the jaws and face, particularly with reference to specialized surgery of this region.

"Oral and maxillofacial surgeon" means a person who has successfully completed an oral and maxillofacial residency program, approved by the Commission on Dental Accreditation of the American Dental Association, and who holds a valid license from the Board.

(1950, p. 983, § 54-200.1; 1970, c. 639; 1972, c. 805; 1988, c. 765; 2001, c. 662.)

§ 54.1-2701. Exemptions.

This chapter shall not:

1. Apply to a licensed physician or surgeon unless he practices dentistry as a specialty;

2. Apply to a nurse practitioner certified by the Board of Nursing and the Board of Medicine except that intraoral procedures shall be performed only under the direct supervision of a licensed dentist;

3. Apply to a dentist or a dental hygienist of the United States Army, Navy, Coast Guard, Air Force, Public Health Service, or Veterans Administration;

4. Apply to any dentist of the United States Army, Navy, Coast Guard, or Air Force rendering services voluntarily and without compensation while deemed to be licensed pursuant to § 54.1-106;

5. Apply to any dentist or dental hygienist who (i) does not regularly practice dentistry in Virginia, (ii) holds a current valid license or certificate to practice as a dentist or dental hygienist in another state, territory, district or possession of the United States, (iii) volunteers to provide free health care to an underserved area of this Commonwealth under the auspices of a publicly supported all volunteer, nonprofit organization that sponsors the provision of health care to populations of underserved people, (iv) files a copy of the license or certificate issued in such other jurisdiction with the Board, (v) notifies the Board at least 15 days prior to the voluntary provision of services of the dates and location of such service, and (vi) acknowledges, in writing, that such licensure exemption shall only be valid, in compliance with the Board's regulations, during the limited period that such free health care is made available through the volunteer, nonprofit organization on the dates and at the location filed with the Board. The Board may deny the right to practice in Virginia to any dentist or dental hygienist whose license has been previously suspended or revoked, who has been convicted of a felony or who is otherwise found to be in violation of applicable laws or regulations; or

6. Prevent an office assistant from performing usual secretarial duties or other assistance as set forth in regulations promulgated by the Board.

(Code 1950, §§ 54-149 through 54-151, 54-172; 1970, c. 639; 1972, c. 805, § 54-200.23; 1975, c. 479; 1988, c. 765; 1995, c. 509; 2002, c. 740; 2003, c. 495.)

§ 54.1-2702. Board; membership; terms of office; officers; quorum.

The Board of Dentistry shall consist of ten members as follows: seven dentists, one citizen member and two dental hygienists.

The professional members of the Board shall be licensed practitioners of dentistry or dental hygiene, of acknowledged ability in the profession, and must have practiced dentistry or dental hygiene in this Commonwealth for at least three years.

The terms of office of the members shall be four years.

The Board shall annually choose a president and a secretary-treasurer and shall meet at least annually at such times and places as it may deem proper. A majority of the members of the Board shall constitute a quorum.

(Code 1950, §§ 54-153 through 54-155, 54-157, 54-161, 54-162; 1972, c. 805; 1977, c. 669; 1985, c. 49; 1986, c. 464; 1988, cc. 42, 66, 765; 1992, c. 411.)

§ 54.1-2703. Inspection of dental offices and laboratories.

Employees of the Department of Health Professions, when properly identified, shall be authorized, during ordinary business hours, to enter and inspect any dental office or dental laboratory for the purpose of enforcing the provisions of this chapter.

(Code 1950, § 54-167; 1962, c. 45; 1972, c. 805; 1988, c. 765; 2005, cc. 505, 587.)

§ 54.1-2704. Nominations.

Nominations may be made for each professional vacancy from a list of three names submitted to the Governor by the Virginia Dental Association, the Old Dominion State Dental Society, the Virginia Dental Hygienists' Association, and the Commonwealth Dental Hygienists' Society. Further, any licensee of this chapter may submit nominations to the Governor. The Governor shall not be bound to make any appointment from among the nominees.

(Code 1950, § 54-156; 1972, c. 805; 1977, c. 669; 1986, c. 464; 1988, c. 765; 2005, cc. 505, 587.)

§ 54.1-2705. Investigation of applicant for license.

The Board shall investigate the qualifications and truthfulness on registration of any applicant for a license to practice dentistry or dental hygiene, and for such purposes shall have power to send for witnesses, papers and documents, and administer oaths. The cost of such inquiry shall be borne by the applicant.

(Code 1950, § 54-176; 1972, c. 805; 1975, c. 479; 1988, c. 765.)

§ 54.1-2706. Revocation or suspension; other sanctions.

The Board may refuse to admit a candidate to any examination, refuse to issue a license to any applicant, suspend for a stated period or indefinitely, or revoke any license or censure or reprimand any licensee or place him on probation for such time as it may designate for any of the following causes:

1. Fraud, deceit or misrepresentation in obtaining a license;

2. The conviction of any felony or the conviction of any crime involving moral turpitude;

3. Use of alcohol or drugs to the extent that such use renders him unsafe to practice dentistry or dental hygiene;

4. Any unprofessional conduct likely to defraud or to deceive the public or patients;

5. Intentional or negligent conduct in the practice of dentistry or dental hygiene which causes or is likely to cause injury to a patient or patients;

6. Employing or assisting persons whom he knew or had reason to believe were unlicensed to practice dentistry or dental hygiene;

7. Publishing or causing to be published in any manner an advertisement relating to his professional practice which (i) is false, deceptive or misleading, (ii) contains a claim of superiority, or (iii) violates regulations promulgated by the Board governing advertising;

8. Mental or physical incompetence to practice his profession with safety to his patients and the public;

9. Violating, assisting, or inducing others to violate any provision of this chapter or any Board regulation;

10. Conducting his practice in a manner contrary to the standards of ethics of dentistry or dental hygiene;

11. Practicing or causing others to practice in a manner as to be a danger to the health and welfare of his patients or to the public;

12. Practicing outside the scope of the dentist's or dental hygienist's education, training, and experience;

13. Performing a procedure subject to certification without such valid certification required by the Board pursuant to § 54.1-2709.1 and Board regulations; however, procedures performed pursuant to the provisions of subdivision 5 of § 54.1-2712 as part of an American Dental Association accredited residency program shall not require such certification;

14. The revocation, suspension or restriction of a license to practice dentistry or dental hygiene in another state, possession or territory of the United States or foreign country; or

15. The violation of any provision of a state or federal law or regulation relating to manufacturing, distributing, dispensing or administering drugs.

(Code 1950, § 54-187; 1962, c. 45; 1972, c. 805; 1973, c. 391; 1975, c. 479; 1978, cc. 247, 248; 1984, c. 28; 1988, c. 765; 2001, c. 662; 2004, c. 64; 2005, cc. 505, 587.)

§ 54.1-2707.

Reserved.

§ 54.1-2708. Disciplinary action discretion.

Except in the case of a monetary penalty, the Board may take disciplinary action notwithstanding any action pending before or consummated before any court or any criminal penalty which has been or may be imposed.

(1972, c. 805, § 54-189.1; 1975, c. 479; 1978, c. 248; 1988, cc. 64; 765; 1997, c. 556.)

§ 54.1-2708.1.

Repealed by Acts 1997, c. 698.

§ 54.1-2709. License; application; qualifications; examinations.

A. No person shall practice dentistry unless he possesses a current valid license from the Board of Dentistry.

B. An application for such license shall be made to the Board in writing and shall be accompanied by satisfactory proof that the applicant (i) is of good moral character; (ii) is a graduate of an accredited dental school or college, or dental department of a university or college; (iii) has passed Part I and Part II of the examination given by the Joint Commission on National Dental Examinations; (iv) has successfully completed a clinical examination acceptable to the Board; and (v) has met other qualifications as determined in regulations promulgated by the Board.

C. The Board may grant a license to practice dentistry to an applicant licensed to practice in another jurisdiction if he (i) meets the requirements of subsection B; (ii) holds a current, unrestricted license to practice dentistry in another jurisdiction in the United States and is certified to be in good standing by each jurisdiction in which he currently holds or has held a license; (iii) has not failed a clinical examination required by the Board in the five years immediately preceding his application (iv) has not committed any act that would constitute grounds for denial as set forth in § 54.1-2706; and (v) has been in continuous clinical practice for five out of the six years immediately preceding application for licensure pursuant to this section. Active patient care in the dental corps of the United States Armed Forces, volunteer practice in a public health clinic, or practice in an intern or residency program may be accepted by the Board to satisfy this requirement.

D. The Board shall provide for an inactive license for those dentists who hold a current, unrestricted dental license in the Commonwealth at the time of application for an inactive license and who do not wish to practice in Virginia. The Board shall promulgate such regulations as may be necessary to carry out the provisions of this section, including requirements for remedial education to activate a license.

E. The Board shall promulgate regulations requiring continuing education for any dental license renewal or reinstatement. The Board may grant extensions or exemptions from these continuing education requirements.

(Code 1950, §§ 54-168 through 54-171, 54-175; 1968, c. 604; 1972, cc. 805, 824; 1973, c. 391; 1974, c. 411; 1976, c. 327; 1977, c. 518; 1981, c. 216; 1988, c. 765; 1997, c. 855; 2005, cc. 505, 587.)

§ 54.1-2709.1. Certain certification required.

A. The Board of Dentistry shall promulgate regulations establishing criteria for certification of board certified or board eligible oral or maxillofacial surgeons to perform certain procedures within the definition of dentistry that are unrelated to the oral cavity or contiguous structures, provided such services (i) are not for the prevention and treatment of disorders, diseases, lesions and malpositions of the human teeth, alveolar process, maxilla, mandible, or adjacent tissues, or any necessary related procedures, and are services the training for which is included in the curricula of dental schools or advanced postgraduate education programs accredited by the Commission of Dental Accreditation of the American Dental Association or continuing educational programs recognized by the Board of Dentistry, or (ii) are not provided incident to a head or facial trauma sustained by the patient. The regulations shall include, but need not be limited to, provisions for: (1) promotion of patient safety; (2) identification and categorization of procedures for the purpose of issuing certificates; (3) establishment of an application process for certification to perform such procedures; (4) establishment of minimum education, training, and experience requirements for certification to perform such procedures, including consideration of whether a licensee has been granted practice privileges to perform such procedures from an accredited hospital located in the Commonwealth and consideration of the presentation of a letter attesting to the training of the applicant to perform such procedures from the chairman of an accredited postgraduate residency program; (5) development of protocols for proctoring and criteria for requiring such proctoring; and (6) implementation of a quality assurance review process for such procedures performed by certificate holders.

B. In promulgating the minimum education, training, and experience requirements for oral and maxillofacial surgeons to perform such procedures and the regulations related thereto, the Board of Dentistry shall consult with an advisory committee comprised of three members selected by the Medical Society of Virginia and three members selected by the Virginia Society of Oral and Maxillofacial Surgeons. All members of the advisory

committee shall be licensed by the Board of Dentistry or the Board of Medicine and shall engage in active clinical practice. The committee shall have a duty to act collaboratively and in good faith to recommend the education, training, and experience necessary to promote patient safety in the performance of such procedures. The advisory committee shall prepare a written report of its recommendations and shall submit this report to the Board of Dentistry and shall also submit its recommendations to the Board of Medicine for such comments as may be deemed appropriate, prior to the promulgation of draft regulations. The advisory committee may meet periodically to advise the Board of Dentistry on the regulation of such procedures.

C. In promulgating the regulations required by this section, the Board shall take due consideration of the education, training, and experience requirements adopted by the American Dental Association Council on Dental Education or the Commission on Dental Accreditation. Further, the Board's regulations shall require that complaints arising out of performance of such procedures be enforced solely by the Board of Dentistry and reviewed jointly by a physician licensed by the Board of Medicine who actively practices in a related specialty and by an oral and maxillofacial surgeon licensed by the Board of Dentistry. However, upon receipt of reports of such complaints the Board of Dentistry shall promptly notify the Board of Medicine which shall maintain the confidentiality of such complaint consistent with § 54.1-2400.2.

(2001, c. 662.)

§ 54.1-2709.2. Registration and certain data required.

The Board of Dentistry shall require all oral and maxillofacial surgeons to annually register with the Board and to report and make available the following information:

1. The names of medical schools or schools of dentistry attended and dates of graduation;

2. Any graduate medical or graduate dental education at any institution approved by the Accreditation Council for Graduation Medical Education, the Commission on Dental Accreditation, American Dental Association;

3. Any specialty board certification or eligibility for certification as approved by the Commission on Dental Accreditation, American Dental Association;

4. The number of years in active, clinical practice as specified by regulations of the Board;

5. Any insurance plans accepted, managed care plans in which the oral and maxillofacial surgeon participates, and hospital affiliations, including specification of any privileges granted by the hospital;

6. Any appointments, within the most recent 10-year period, of the oral and maxillofacial surgeon to a dental school faculty and any publications in peer-reviewed literature within the most recent five-year period and as specified by regulations of the Board;

7. The location of any primary and secondary practice settings and the approximate percentage of the oral and maxillofacial surgeon's time spent practicing in each setting;

8. The access to any translating service provided to the primary practice setting of the oral and maxillofacial surgeon;

9. The status of the oral and maxillofacial surgeon's participation in the Virginia Medicaid Program;

10. Any final disciplinary or other action required to be reported to the Board by health care institutions, other practitioners, insurance companies, health maintenance organizations, and professional organizations pursuant to §§ 54.1-2400.6, 54.1-2709.3, and 54.1-2709.4 that results in a suspension or revocation of privileges or the termination of employment or a final order of the Board relating to disciplinary action; and

11. Other information related to the competency of oral and maxillofacial surgeons as specified in the regulations of the Board.

The Board shall promulgate regulations to implement the provisions of this section, including, but not limited to, the release, upon request by a consumer, of such information relating to an oral and maxillofacial surgeon. The regulations promulgated by the Board shall provide for reports to include all paid claims in categories indicating the level of significance of each award or settlement.

(2001, c. 662; 2004, c. 64.)

§ 54.1-2709.3. Reports of disciplinary action against oral and maxillofacial surgeons; immunity from liability.

A. The presidents of the Virginia Dental Association and the Virginia Society of Oral and Maxillofacial Surgeons shall report to the Board of Dentistry any disciplinary actions taken by his organization against any oral and maxillofacial surgeon licensed under this chapter if such disciplinary action is a result of conduct involving professional ethics, professional incompetence, moral turpitude, drug or alcohol abuse.

B. The president of any association, society, academy or organization shall report to the Board of Dentistry any disciplinary action taken against any oral and maxillofacial surgeon licensed under this chapter if such disciplinary action is a result of conduct involving professional ethics, professional incompetence, moral turpitude, drug addictions or alcohol abuse.

C. Any report required by this section shall be in writing directed to the Board of Dentistry, shall give the name and address of the person who is the subject of the report and shall describe fully the circumstances surrounding the conduct to be reported.

D. Any person making a report required by this section or testifying in a judicial or administrative proceeding as a result of such report shall be immune from any civil liability resulting therefrom unless such person acted in bad faith or with malicious intent.

E. In the event that any organization enumerated in subsection A or any component thereof receives a complaint against an oral and maxillofacial surgeon, such organization may, in lieu of considering disciplinary action against such oral and maxillofacial surgeon, request that the Board investigate the matter pursuant to this chapter, in which event any person participating in the decision to make such a request or testifying in a judicial or administrative proceeding as a result of such request shall be immune from any civil liability alleged to have resulted therefrom unless such person acted in bad faith or with malicious intent.

(2001, c. 662.)

§ 54.1-2709.4. Further reporting requirements.

A. The following matters shall be reported to the Board:

1. Any disciplinary action taken against an oral and maxillofacial surgeon licensed under this chapter by another state or by a federal health institution or voluntary surrender of a license in another state while under investigation;

2. Any malpractice judgment against an oral and maxillofacial surgeon licensed under this chapter;

3. Any incident of two settlements of malpractice claims against an individual oral and maxillofacial surgeon licensed under this chapter within a three-year period; and

4. Any evidence that indicates to a reasonable probability that an oral and maxillofacial surgeon licensed under this chapter is or may be professionally incompetent, guilty of unprofessional conduct or mentally or physically unable to engage safely in the practice of his profession.

B. The following persons and entities are subject to the reporting requirements set forth in this section:

1. Any oral and maxillofacial surgeon licensed under this chapter who is the subject of a disciplinary action, settlement judgment or evidence for which reporting is required pursuant to this section;

2. Any other person licensed under this chapter, except as provided in the Health Practitioners' Intervention Program;

3. The presidents of all professional societies in the Commonwealth, and their component societies whose members are regulated by the Board, except as provided for in the protocol agreement entered into by the Health Practitioners' Intervention Program;

4. All health care institutions licensed by the Commonwealth;

5. The malpractice insurance carrier of any oral and maxillofacial surgeon who is the subject of a judgment or of two settlements within a three-year period. The carrier shall not be required to report any settlements except those in which it has participated that have resulted in a least two settlements on behalf of an individual oral and maxillofacial surgeon during a three-year period; and

6. Any health maintenance organization licensed by the Commonwealth.

C. No person or entity shall be obligated to report any matter to the Board if the person or entity has actual notice that the matter has already been reported to the Board.

D. Any report required by this section shall be in writing directed to the Board, shall give the name and address of the person who is the subject of the report and shall describe the circumstances surrounding the conduct required to be reported.

E. Any person making a report required by this section shall be immune from any civil liability or criminal prosecution resulting therefrom unless such person acted in bad faith or with malicious intent.

F. The clerk of any circuit court or any district court in the Commonwealth shall report to the Board the conviction of any oral and maxillofacial surgeon known by such clerk to be licensed under this chapter of any (i) misdemeanor involving a controlled substance, marijuana or substance abuse or involving an act of moral turpitude or (ii) felony.

(2001, c. 662.)

§ 54.1-2710.

Repealed by Acts 2005, cc. 505 and 587, cl. 2.

§ 54.1-2711. Practice of dentistry.

Any person shall be deemed to be practicing dentistry who (i) uses the words dentist, or dental surgeon, the letters D.D.S., D.M.D., or any letters or title in connection with his name, which in any way represents him as engaged in the practice of dentistry; (ii) holds himself out, advertises or permits to be advertised that he can or will perform dental operations of any kind; (iii) diagnoses, treats, or professes to diagnose or treat any of the diseases or lesions of the oral cavity, its contents or contiguous structures, or (iv) extracts teeth, corrects malpositions of the teeth or jaws, takes impressions for the fabrication of appliances or dental prosthesis, supplies or repairs artificial teeth as substitutes for natural teeth, or places in the mouth and adjusts such substitutes.

No dentist shall be supervised within the scope of the practice of dentistry by any person who is not a licensed dentist.

(Code 1950, § 54-146; 1972, c. 805; 1988, c. 765.)

§ 54.1-2711.1. Temporary licenses to persons enrolled in advanced dental education programs; Board regulations.

A. Upon recommendation by the dean of the school of dentistry, the Board may issue a temporary annual license to practice dentistry to persons enrolled in advanced dental education programs, serving as dental interns, residents or post-doctoral certificate or degree candidates in hospitals or schools of dentistry that maintain dental intern, residency or post-doctoral programs accredited by the Commission on Dental Accreditation of the American Dental Association. No such license shall be issued to a dental intern or resident or post-doctoral certificate or degree candidate who has not completed successfully the academic education required for admission to examination given by the Board. Such license shall expire upon the holder's graduation, withdrawal or termination from the relevant program.

B. The Board may prescribe such regulations not in conflict with existing law and require such reports from any hospital or the school of dentistry operating an accredited advanced dental education program in the Commonwealth as may be necessary to carry out the provisions of this section.

(2004, c. 754.)

§ 54.1-2712. Permissible practices.

The following activities shall be permissible:

1. Dental assistants or dental hygienists aiding or assisting licensed dentists, or dental assistants aiding or assisting dental hygienists under the general supervision of a dentist;

2. The performance of mechanical work on inanimate objects only, for licensed dentists, by any person employed in or operating a dental laboratory;

3. Dental students who are enrolled in accredited D.D.S. or D.M.D. degree programs performing dental operations, under the direction of competent instructors (i) within a dental school or college, dental department of a university or college, or other dental facility within a university or college that is accredited by an accrediting agency recognized by the United States Department of Education; (ii) in a dental clinic operated by a nonprofit organization providing indigent care; (iii) in governmental or indigent care clinics in which the student is assigned to practice during his final academic year rotations; (iv) in a private dental office for a limited time during the student's final academic year when under the direct tutorial supervision of a licensed dentist holding appointment on the dental faculty of the school in which the student is enrolled; or (v) practicing dental hygiene in a private dental office under the direct supervision of a licensed dentist holding appointment on the dental faculty of the school in which the student is enrolled;

4. A licensed dentist from another state or country appearing as a clinician for demonstrating technical procedures before a dental society or organization, convention, or dental college, or performing his duties in connection with a specific case on which he may have been called to the Commonwealth; and

5. Dental hygiene students enrolled in an accredited dental hygiene program performing dental hygiene practices as a requisite of the program, under the direction of competent instructors, as defined by regulations of the Board of Dentistry, (i) within a dental hygiene program in a dental school or college, or department thereof, or other dental facility within a university or college that is accredited by an accrediting agency recognized by the United States Department of Education; (ii) in a dental clinic operated by a nonprofit organization providing indigent care; (iii) in a governmental or indigent care clinic in which the student is assigned to practice during his final academic year rotations; or (iv) in a private dental office for a limited time during the student's final academic year when under the direct supervision of a licensed dentist or licensed dental hygienist holding appointment on the dental faculty of the school in which the student is enrolled.

(Code 1950, § 54-147; 1970, c. 639; 1972, c. 805; 1975, c. 479; 1985, c. 373; 1988, c. 765; 1989, c. 131; 1994, c. 749; 2004, c. 754; 2005, cc. 505, 587.)

§ 54.1-2712.1. Restricted volunteer license for certain dentists.

A. The Board may issue a restricted volunteer license to a dentist who:

1. Held an unrestricted license in Virginia or another state as a licensee in good standing at the time the license expired or became inactive;

2. Is volunteering for a public health or community free clinic that provides dental services to populations of underserved people;

3. Has fulfilled the Board's requirement related to knowledge of the laws and regulations governing the practice of dentistry in Virginia;

4. Has not failed a clinical examination within the past five years; and

5. Has had at least five years of clinical practice.

B. A person holding a restricted volunteer license under this section shall:

1. Only practice in public health or community free clinics that provide dental services to underserved populations;

2. Only treat patients who have been screened by the approved clinic and are eligible for treatment;

3. Attest on a form provided by the Board that he will not receive remuneration directly or indirectly for providing dental services; and

4. Not be required to complete continuing education in order to renew such a license.

C. If a dentist with a restricted volunteer license issued under this section has not held an active, unrestricted license and been engaged in active practice within the past five years, he shall only practice dentistry and perform dental procedures if a dentist with an unrestricted Virginia license, volunteering at the clinic, reviews the quality of care rendered by the dentist with the restricted volunteer license at least every 30 days.

D. A restricted voluntary license granted pursuant to this section shall expire on the June 30 of the second year after its issuance, or shall terminate when the supervising dentist withdraws his sponsorship. Such license may be renewed annually in accordance with regulations promulgated by the Board.

E. A dentist holding a restricted volunteer license issued pursuant to this section is subject to the provisions of this chapter, the regulations promulgated under this chapter, and the disciplinary regulations which apply to all dentists practicing in Virginia.

(1997, c. 719; 1998, c. 326; 2005, cc. 505, 587.)

§ 54.1-2713. Licenses to teach dentistry; renewals.

Upon payment of the prescribed fee, the Board shall grant, without examination, a license to teach dentistry to any applicant who (i) is a graduate of a dental school or college or the dental department of a college or university approved by the Board of Dentistry; (ii) has a D.D.S. or D.M.D. degree and is otherwise qualified; (iii) is not licensed to practice dentistry in the Commonwealth; (iv) has not failed an examination for a license to practice dentistry in Virginia; and (v) has a license to practice dentistry in at least one other state. The applicant shall also be certified to be on the faculty of an accredited program that teaches dentistry. The holder of such a license shall be entitled to perform all operations which a person licensed to practice dentistry would be entitled

to perform but only for the express purpose of teaching. This license does not entitle the holder to practice dentistry intramurally or privately or to receive fees for service.

Any license issued under this section shall expire on the June 30 of the second year after its issuance or shall terminate when the licensee leaves employment at the accredited dental program. Such license may be renewed annually thereafter as long as the accredited program certifies to the licensee's continuing employment.

(1975, c. 479, § 54-175.1; 1976, c. 327; 1988, c. 765; 2005, cc. 505, 587.)

§ 54.1-2714. Restricted licenses to teach dentistry for foreign dentists.

A. The Board may grant, without examination a restricted license to teach dentistry at a dental school in this Commonwealth to any person who:

1. Is a resident of a foreign country;

2. Is licensed to practice dentistry in a foreign country;

3. Holds a faculty appointment in a dental school in a foreign country;

4. Is a graduate of a foreign dental school or college or the dental department of a foreign college or university;

5. Is not licensed to practice dentistry in Virginia;

6. Has not failed an examination for a license to practice dentistry in this Commonwealth;

7. Has received a temporary appointment to the faculty of a dental school in this Commonwealth to teach dentistry;

8. Is, in the opinion of the Board, qualified to teach dentistry; and

9. Submits a completed application, the supporting documents the Board deems necessary to determine his qualifications, and the prescribed fee.

B. A restricted license shall entitle the licensee to perform all operations which a person licensed to practice dentistry may perform but only for the purpose of teaching. No person granted a restricted license shall practice dentistry intramurally or privately or receive fees for his services.

C. A restricted license granted pursuant to this section shall expire twelve months from the date of issuance and may not be renewed or reissued.

(1977, c. 349, § 54-175.2; 1988, c. 765.)

§ 54.1-2714.1. Faculty licenses to practice dentistry for full-time faculty members.

Pursuant to regulations promulgated by the Board, the Board may grant a faculty license to practice dentistry to full-time faculty members of schools of dentistry in the Commonwealth.

(1988, c. 207, § 54-175.3.)

§ 54.1-2715. Temporary permits for certain clinicians.

A. The Board may issue a temporary permit to a graduate of a dental school or college or the dental department of a college or university, who (i) has a D.D.S. or D.M.D. degree and is otherwise qualified, (ii) is not licensed to practice dentistry in Virginia, and (iii) has not failed an examination for a license to practice dentistry in the Commonwealth. Such temporary permits may be issued only to those eligible graduates who serve as clinicians in dental clinics operated by (a) the Virginia Department of Corrections, (b) the Virginia Department of Health, (c) the Virginia Department of Mental Health, Mental Retardation and Substance Abuse Services, or (d) a Virginia charitable corporation granted tax-exempt status under § 501 (c) (3) of the Internal Revenue Code and operating as a clinic for the indigent and uninsured that is organized for the delivery of primary health care services: (i) as a federal qualified health center designated by the Centers for Medicare and Medicaid Services or (ii) at a reduced or sliding fee scale or without charge.

B. Applicants for temporary permits shall be certified to the executive director of the Board by the Director of the Department of Corrections, the Commissioner of Health, the Commissioner of Mental Health, Mental Retardation and Substance Abuse Services, or the chief executive officer of a Virginia charitable corporation identified in subsection A. The holder of such a temporary permit shall not be entitled to receive any fee or other compensation other than salary. Such permits shall be valid for no more than two years and shall expire on the June 30 of the second year after their issuance, or shall terminate when the holder ceases to serve as a clinician with the certifying agency or charitable corporation. Such permits may be reissued annually or may be revoked at any time for cause. Reissuance or revocation of a temporary permit is in the discretion of the Board.

C. Dentists licensed pursuant to this chapter may practice as employees of the dental clinics operated as specified in subsection A.

(Code 1950, § 54-152; 1968, c. 604; 1970, c. 639; 1972, c. 805; 1975, c. 479; 1976, c. 327; 1985, c. 373; 1988, c. 765; 2002, c. 549; 2004, c. 48; 2005, cc. 505, 587; 2006, c. 176.)

§ 54.1-2716. Practicing in a commercial or mercantile establishment.

It shall be unlawful for any dentist to practice his profession in a commercial or mercantile establishment, or to advertise, either in person or through any commercial or mercantile establishment, that he is a licensed practitioner and is practicing or will practice dentistry in such commercial or mercantile establishment. This section shall not prohibit the rendering of professional services to the officers and employees of any person, firm or corporation by a dentist, whether or not the compensation for such service is paid by the officers and employees, or by the employer, or jointly by all or any of them. Any dentist who violates any of the provisions of this section shall be guilty of a Class 1 misdemeanor.

For the purposes of this section, the term "commercial or mercantile establishment" means a business enterprise engaged in the selling of commodities or services unrelated to the practice of dentistry or the other healing arts.

(Code 1950, § 54-147.1; 1988, c. 765.)

§ 54.1-2717. Practice of dentistry by professional business entities.

A. No corporation shall be formed or foreign corporation domesticated in the Commonwealth for the purpose of practicing dentistry other than a professional corporation as permitted by Chapter 7 (§ 13.1-542 et seq.) of Title 13.1.

B. No limited liability company shall be organized or foreign limited liability company domesticated in the Commonwealth for the purpose of practicing dentistry other than a professional limited liability company as permitted by Chapter 13 (§ 13.1-1100 et seq.) of Title 13.1.

C. Notwithstanding the provisions of subsections A and B, dentists licensed pursuant to this chapter may practice as employees of the dental clinics operated as specified in subsection A of § 54.1-2715.

(Code 1950, § 54-183; 1988, c. 765; 1992, c. 574; 2004, c. 48.)

§ 54.1-2718. Practicing under firm or assumed name.

A. No person shall practice, offer to practice, or hold himself out as practicing dentistry, under a name other than his own. This section shall not prohibit the practice of dentistry by a partnership under a firm name, or a licensed dentist from practicing dentistry as the employee of a licensed dentist, practicing under his own name or under a firm name, or as the employee of a professional corporation, or as a member, manager, employee, or agent of a professional limited liability company or as the employee of a dental clinic operated as specified in subsection A of § 54.1-2715.

B. A dentist, partnership, professional corporation, or professional limited liability company that owns a dental practice may adopt a trade name for that practice so long as the trade name meets the following requirements:

1. The trade name incorporates one or more of the following: (i) a geographic location, e.g., to include, but not be limited to, a street name, shopping center, neighborhood, city, or county location; (ii) type of practice; or (iii) a derivative of the dentist's name.

2. Derivatives of American Dental Association approved specialty board certifications may be used to describe the type of practice if one or more dentists in the practice are certified in the specialty or if the specialty name is accompanied by the conspicuous disclosure that services are provided by a general dentist in every advertising medium in which the trade name is used.

3. The trade name is used in conjunction with either (i) the name of the dentist or (ii) the name of the partnership, professional corporation, or professional limited liability company that owns the practice. The owner's name shall be conspicuously displayed along with the trade name used for the practice in all advertisements in any medium.

4. Marquee signage, web page addresses, and email addresses are not considered to be advertisements and may be limited to the trade name adopted for the practice.

(Code 1950, § 54-184; 1970, c. 639; 1975, c. 479; 1988, c. 765; 1992, c. 574; 2004, c. 48; 2005, cc. 505, 587.)

§ 54.1-2719. Persons engaged in construction and repair of appliances.

A. Licensed dentists may employ or engage the services of any person, firm or corporation to construct or repair, extraorally, prosthetic dentures, bridges, or other replacements for a part of a tooth, a tooth, or teeth. A person, firm or corporation so employed or engaged shall not be considered to be practicing dentistry. No such person, firm or corporation shall perform any direct dental service for a patient, but they may assist a dentist in the selection of shades for the matching of prosthetic devices when the dentist sends the patient to them with a written work order.

B. Any licensed dentist who employs the services of any person, firm or corporation not working in a dental office under his direct supervision to construct or repair, extraorally, prosthetic dentures, bridges, replacements, or orthodontic appliances for a part of a tooth, a tooth, or teeth, shall furnish such person, firm or corporation with a written work order on forms prescribed by the Board which shall, at minimum, contain: (i) the name and address of the person, firm or corporation; (ii) the patient's name or initials or an identification number; (iii) the date the work order was written; (iv) a description of the work to be done, including diagrams, if necessary; (v) specification of the type and quality of materials to be used; and (vi) the signature and address of the dentist.

The person, firm or corporation shall retain the original work order and the dentist shall retain a duplicate for three years.

C. If the person, firm or corporation receiving a written work order from a licensed dentist engages a subcontractor to perform services relative to the work order, a written subwork order shall be furnished on forms prescribed by the Board which shall, at minimum, contain: (i) the name and address of the subcontractor; (ii) a number identifying the subwork order with the original work order; (iii) the date the subwork order was written; (iv) a description of the work to be done by the subcontractor including diagrams, if necessary; (v) a specification of the type and quality of materials to be used; and (vi) the signature of the person issuing the subwork order.

The subcontractor shall retain the subwork order and the issuer shall retain a duplicate attached to the work order received from the licensed dentist for three years.

D. No person, firm or corporation engaged in the construction or repair of appliances shall refuse to allow the Board or its agents to inspect the files of work orders or subwork orders during ordinary business hours.

The provisions of this section shall not apply to a work order for the construction, reproduction, or repair, extraorally, of prosthetic dentures, bridges, or other replacements for a part of a tooth, a tooth, or teeth, done by a person, firm or corporation pursuant to a written work order received from a licensed dentist who is residing and practicing in another state.

(1962, c. 45, § 54-147.2; 1972, c. 805; 1988, c. 765.)

§ 54.1-2720. Display of name of practitioner.

Every person practicing dentistry under a firm name, and every person practicing dentistry as an employee of another licensed dentist shall conspicuously display his name at the entrance of the office. Any licensed dentist who fails to display his name shall be subject to disciplinary action by the Board.

(Code 1950, § 54-186; 1972, c. 805; 1988, c. 765; 2005, cc. 505, 587.)

§ 54.1-2721. Display of license.

Every person practicing dentistry in this Commonwealth shall display his license in his office in plain view of patients. Any person practicing dentistry without having his license on display shall be subject to disciplinary action by the Board.

The provisions of this section shall not apply to any dentist while he is serving as a volunteer providing dental services in an underserved area of the Commonwealth under the auspices of a Virginia charitable corporation granted tax-exempt status under § 501 (c) (3) of the Internal Revenue Code and operating as a clinic for the indigent and uninsured that is organized for the delivery of primary health care services.

(Code 1950, § 54-197; 1972, c. 805; 1988, c. 765; 2006, c. 823.)

§ 54.1-2722. License; application; qualifications; practice of dental hygiene.

A. No person shall practice dental hygiene unless he possesses a current, active, and valid license from the Board of Dentistry. The licensee shall have the right to practice dental hygiene in the Commonwealth for the period of his license as set by the Board, under the direction of any licensed dentist.

B. An application for such license shall be made to the Board in writing, and shall be accompanied by satisfactory proof that the applicant (i) is of good moral character, (ii) is a graduate of an accredited dental hygiene program offered by an accredited institution of higher education, (iii) has passed the dental hygiene examination given by the Joint Commission on Dental Examinations, and (iv) has successfully completed a clinical examination acceptable to the Board.

C. The Board may grant a license to practice dental hygiene to an applicant licensed to practice in another jurisdiction if he (i) meets the requirements of subsection B of this section; (ii) holds a current, unrestricted license to practice dental hygiene in another jurisdiction in the United States; (iii) has not committed any act that would constitute grounds for denial as set forth in § 54.1-2706; and (iv) meets other qualifications as determined in regulations promulgated by the Board.

D. A licensed dental hygienist may, under the direction or general supervision of a licensed dentist and subject to the regulations of the Board, perform services that are educational, diagnostic, therapeutic, or preventive. These services shall not include the establishment of a final diagnosis or treatment plan for a dental patient.

A dentist may also authorize a dental hygienist under his direction to administer Schedule VI nitrous oxide and oxygen inhalation analgesia and, to persons 18 years of age or older, Schedule VI local anesthesia. In its regulations, the Board of Dentistry shall establish the education and training requirements for dental hygienists to administer such controlled substances under a dentist's direction.

For the purposes of this section, "general supervision" means that a dentist has evaluated the patient and prescribed authorized services to be provided by a dental hygienist; however, the dentist need not be present in the facility while the authorized services are being provided.

The Board shall provide for an inactive license for those dental hygienists who hold a current, unrestricted license to practice in the Commonwealth at the time of application for an inactive license and who do not wish to practice in Virginia. The Board shall promulgate such regulations as may be necessary to carry out the provisions of this section, including requirements for remedial education to activate a license.

(1950, pp. 983-985, §§ 54-200.2, 54-200.4, 54-200.7 through 54-200.9, 54-200.11; 1968, c. 604; 1970, c. 639; 1972, cc. 805, 824; 1973, c. 391; 1975, c. 479; 1976, c. 327; 1986, c. 178; 1988, c. 765; 1990, c. 441; 1997, c. 855; 2002, c. 170; 2005, cc. 505, 587; 2006, c. 858.)

§ 54.1-2723.

Repealed by Acts 2005, cc. 505 and 587, cl. 2.

§ 54.1-2724. Limitations on the employment of dental hygienists.

The Board shall determine by regulation how many dental hygienists may work at one time for a dentist. The State Board of Health may employ the necessary number of hygienists in public school dental clinics, subject to regulations of the Board.

(1950, p. 984, § 54-200.6; 1972, c. 805; 1978, c. 247; 1988, c. 765.)

§ 54.1-2725. Licenses to teach dental hygiene; renewals.

Upon payment of the prescribed fee, the Board shall grant, without examination, a license to teach dental hygiene to any applicant who (i) is a graduate of a dental hygiene school or college or the dental hygiene department of a college or university approved by the Board of Dentistry; (ii) has a B.S., B.A., A.B., or M.S. degree and is otherwise qualified; (iii) is not licensed to practice dental hygiene; (iv) has not failed an examination for a license to practice dental hygiene in this Commonwealth; and (v) has a license to practice dental hygiene in at least one other state. The applicant shall be certified to be on the faculty of an approved institution that teaches dentistry or dental hygiene. The holder of such a license shall be entitled to perform all operations which a person licensed to practice dental hygiene would be entitled to perform but only for the express purpose of teaching. This license does not entitle the holder to practice dental hygiene intramurally or privately or to receive fees for services.

Any license issued under this section shall expire on the second June 30 after its issuance but may be renewed.

(1975, c. 479, § 54-175.1; 1976, c. 327; 1988, c. 765.)

§ 54.1-2726. Temporary permits for certain hygienists.

A. The Board may issue a temporary permit to a graduate of an accredited dental hygiene program who is otherwise qualified, has not held a license to practice dental hygiene in Virginia, and has not failed an

examination for a license to practice dental hygiene in the Commonwealth. Such temporary permits shall be issued only to those eligible graduates who serve in the Department of Health or the Department of Mental Health, Mental Retardation and Substance Abuse Services in a dental clinic operated by the Commonwealth or in a Virginia charitable corporation granted tax-exempt status under § 501 (c) (3) of the Internal Revenue Code and operated as a clinic for the indigent and uninsured that is organized for the delivery of primary health care services: (i) as a federally qualified health center designated by the Centers for Medicare & Medicaid Services (CMS) or (ii) at a reduced or sliding fee scale or without charge.

B. Applicants for temporary permits shall be certified to the executive director of the Board by the Commissioner of Health or the Commissioner of Mental Health, Mental Retardation and Substance Abuse Services or the chief executive officer of a Virginia charitable corporation pursuant to subsection A. The holder of such permit shall not be entitled to receive any fee or compensation other than salary. Such permits shall be valid for no more than two years and shall expire on the June 30 of the second year after their issuance, or shall terminate when the holder ceases to be employed by the certifying agency. Such permits may be reissued annually or may be revoked at any time for cause. Reissuance or revocation of a temporary permit is in the discretion of the Board.

The holder of a temporary permit shall function under the direction of a dentist.

(Code 1950, § 54-152; 1968, c. 604; 1970, c. 639; 1972, c. 805; 1975, c. 479; 1976, c. 327; 1985, c. 373; 1988, c. 765; 2005, cc. 505, 587.)

§ 54.1-2726.1. Restricted volunteer license for certain dental hygienists.

A. The Board may issue a restricted volunteer license to a dental hygienist who:

1. Held an unrestricted license in Virginia or another state as a licensee in good standing at the time the license expired or became inactive;

2. Is sponsored and supervised by a dentist who holds an unrestricted license in the Commonwealth;

3. Is volunteering for a public health or community free clinic that provides dental services to populations of underserved people;

4. Has fulfilled the Board's requirement related to knowledge of the laws and regulations governing the practice of dentistry in Virginia;

5. Has not failed a clinical examination within the past five years; and

6. Has had at least five years of clinical practice.

B. A person holding a restricted volunteer license under this section shall:

1. Only practice in public health or community free clinics that provide dental hygiene services to underserved populations;

2. Only treat patients who have been screened by the approved clinic and are eligible for treatment;

3. Attest on a form provided by the Board that he will not receive remuneration directly or indirectly for providing dental hygiene services; and

4. Not be required to complete continuing education in order to renew such a license.

C. A dental hygienist with a restricted volunteer license issued under this section shall only practice dental hygiene under the direction of a dentist with an unrestricted license in Virginia.

D. A restricted voluntary license granted pursuant to this section shall expire on the June 30 of the second year after its issuance, or shall terminate when the supervising dentist withdraws his sponsorship. Such license may be renewed annually thereafter as long as the supervising dentist continues to sponsor the licensee.

E. A dental hygienist holding a restricted volunteer license issued pursuant to this section is subject to the provisions of this chapter, the regulations promulgated under this chapter, and the disciplinary regulations which apply to all dental hygienists practicing in Virginia.

(1997, c. 719; 1998, c. 326; 2005, cc. 505, 587.)

§ 54.1-2727. Display of license.

Every person practicing dental hygiene shall at all times display his license in a conspicuous place in his office in plain view of patients.

The provisions of this section shall not apply to any dental hygienist while he is serving as a volunteer providing dental hygiene services in an underserved area of the Commonwealth under the auspices of a Virginia charitable corporation granted tax-exempt status under § 501 (c) (3) of the Internal Revenue Code and operating as a clinic for the indigent and uninsured that is organized for the delivery of primary health care services.

(1950, p. 985, § 54-200.14; 1972, c. 805; 1988, c. 765; 2006, c. 823.)

§ 54.1-2728. Grounds for revocation or suspension.

The Board may revoke or suspend the license of any dental hygienist for any of the causes set forth in § 54.1-2706, insofar as applicable to the practice of dental hygiene.

(1950, p. 986, § 54-200.18; 1972, c. 805; 1988, c. 765; 2005, cc. 505, 587.)

§ 54.1-2729. Continuing education.

The Board shall promulgate regulations requiring continuing education for any dental hygienist license renewal or reinstatement. The Board may grant exceptions or exemptions from these continuing education requirements.

(1993, c. 555; 1997, c. 3; 2004, c. 137; 2005, cc. 505, 587.)

DRUG LAWS FOR PRACTITIONERS

§ 54.1-3300.

Commonwealth of Virginia

Department of Health Professions
VIRGINIA BOARD OF PHARMACY

(804) 662-9911
(804 662-9313
PHARMBD@DHP.VIRGINIA.GOV
HTTP://WWW.DHP.VIRGINIA.GOV/PHARMACY/DEFAULT.HTM

July 1, 2006

TABLE OF CONTENTS

Selected Drug Laws for Practitioners from the Code of Virginia
Revised July 1, 2006

(INCLUDING CHAPTER 25.2 PRESCRIPTION MONITORING PROGRAM)

Selected Sections from Chapter 33. Pharmacy.

---

§ 54.1-3300. Definitions.

As used in this chapter, unless the context requires a different meaning:
"Board" means the Board of Pharmacy.
"Collaborative agreement" means a voluntary, written arrangement between one pharmacist and his designated alternate pharmacists involved directly in patient care at a location where patients receive services and a practitioner of medicine, osteopathy, or podiatry and his designated alternate practitioners involved directly in patient care which authorizes cooperative procedures with respect to patients of such practitioners. Collaborative procedures shall be related to treatment using drug therapy, laboratory tests or medical devices, under defined conditions or limitations, for the purpose of improving patient outcomes. A collaborative agreement is not required for the management of patients of an inpatient facility.
"Dispense" means to deliver a drug to an ultimate user or research subject by or pursuant to the lawful order of a practitioner, including the prescribing and administering, packaging, labeling or compounding necessary to prepare the substance for delivery.
"Pharmacist" means a person holding a license issued by the Board to practice pharmacy.
"Pharmacy" means every establishment or institution in which drugs, medicines or medicinal chemicals are dispensed or offered for sale, or a sign is displayed bearing the word or words "pharmacist," "pharmacy," "apothecary," "drugstore," "druggist," "drugs," "medicine store," "drug sundries," "prescriptions filled," or any similar words intended to indicate that the practice of pharmacy is being conducted.
"Pharmacy intern" means a student currently enrolled in or a graduate of an approved school of pharmacy who is registered with the Board for the purpose of gaining the practical experience required to apply for licensure as a pharmacist.
"Pharmacy technician" means a person registered with the Board to assist a pharmacist under the pharmacist's supervision.
"Practice of pharmacy" means the personal health service that is concerned with the art and science of selecting, procuring, recommending, administering, preparing, compounding, packaging and dispensing of drugs, medicines and devices used in the diagnosis, treatment, or prevention of disease, whether compounded or dispensed on a prescription or otherwise legally dispensed or distributed, and shall include the proper and safe storage and distribution of drugs; the maintenance of proper records; the responsibility of providing information concerning drugs and medicines and their therapeutic values and uses in the treatment and prevention of disease; and the management of patient care under the terms of a collaborative agreement as defined in this section.
"Supervision" means the direction and control by a pharmacist of the activities of a pharmacy intern or a pharmacy technician whereby the supervising pharmacist is physically present in the pharmacy or in the facility in which the pharmacy is located when the intern or technician is performing duties restricted to a pharmacy intern or technician, respectively, and is available for immediate oral communication.
Other terms used in the context of this chapter shall be defined as provided in Chapter 34 (§ 54.1-3400 et seq.) of this title unless the context requires a different meaning.
(Code 1950, §§ 54-399, 54-487; 1952, c. 451; 1958, c. 551, § 54-524.2; 1966, c. 193; 1968, c. 582; 1970, c. 650; 1971, Ex. Sess., c. 94; 1972, c. 798; 1975, c. 425; 1976, c. 14; 1977, c. 193; 1978, c. 833; 1979, c. 435; 1980, c. 150; 1988, c. 765; 1999, cc. 895, 1011; 2001, c. 317; 2002, c. 411.)

§ 54.1-3300.1. Participation in collaborative agreements; regulations to be promulgated by the Boards of Medicine and Pharmacy.

A pharmacist and his designated alternate pharmacists involved directly in patient care may participate with a practitioner of medicine, osteopathy, or podiatry and his designated alternate practitioners involved directly in patient care in collaborative agreements which authorize cooperative procedures related to treatment using drug therapy, laboratory tests or medical devices, under defined conditions and/or limitations, for the purpose of improving patient outcomes. No patient shall be required to participate in a collaborative procedure without such patient's consent.

Collaborative agreements may include the modification, continuation or discontinuation of drug therapy pursuant to written, patient-specific protocols; the ordering of laboratory tests; or other patient care management measures related to monitoring or improving the outcomes of drug or device therapy. No such collaborative agreement shall exceed the scope of practice of the respective parties. Any pharmacist who deviates from or practices in a manner inconsistent with the terms of a collaborative agreement shall be in violation of § 54.1-2902; such violation shall constitute grounds for disciplinary action pursuant to §§ 54.1-2400 and 54.1-3316.

Collaborative agreements may only be used for conditions which have protocols that are clinically accepted as the standard of care, or are approved by the Boards of Medicine and Pharmacy. The Boards of Medicine and Pharmacy shall jointly develop and promulgate regulations to implement the provisions of this section and to facilitate the development and implementation of safe and effective collaborative agreements between the appropriate practitioners and pharmacists. The regulations shall include guidelines concerning the use of protocols, and a procedure to allow for the approval or disapproval of specific protocols by the Boards of Medicine and Pharmacy if review is requested by a practitioner or pharmacist.

Nothing in this section shall be construed to supersede the provisions of §/n 54.1-3303.

(1999, cc. 895, 1011.)

§ 54.1-3301. Exceptions.

This chapter shall not be construed to:

1. Interfere with any legally qualified practitioner of dentistry, or veterinary medicine or any physician acting on behalf of the Virginia Department of Health or local health departments, in the compounding of his prescriptions or the purchase and possession of drugs as he may require;

2. Prevent any legally qualified practitioner of dentistry, or veterinary medicine or any prescriber, as defined in § 54.1-3401, acting on behalf of the Virginia Department of Health or local health departments, from administering or supplying to his patients the medicines that he deems proper under the conditions of § 54.1-3303 or from causing drugs to be administered or dispensed pursuant to §§ 32.1-42.1 and 54.1-3408;

3. Prohibit the sale by merchants and retail dealers of proprietary medicines as defined in Chapter 34 (§ 54.1-3400 et seq.) of this title;

4. Prevent the operation of automated drug dispensing systems in hospitals pursuant to Chapter 34 (§ 54.1-3400 et seq.) of this title;

5. Prohibit the employment of ancillary personnel to assist a pharmacist as provided in the regulations of the Board;

6. Interfere with any legally qualified practitioner of medicine, osteopathy, or podiatry from purchasing, possessing or administering controlled substances to his own patients or providing controlled substances to his own patients in a bona fide medical emergency or providing manufacturers' professional samples to his own patients;

7. Interfere with any legally qualified practitioner of optometry, certified or licensed to use diagnostic pharmaceutical agents, from purchasing, possessing or administering those controlled substances as specified in §/n 54.1-3221 or interfere with any legally qualified practitioner of optometry certified to prescribe therapeutic pharmaceutical agents from purchasing, possessing, or administering to his own patients those controlled substances as specified in § 54.1-3222 and the TPA formulary or providing manufacturers' samples of these drugs to his own patients;

8. Interfere with any physician assistant with prescriptive authority receiving and dispensing to his own patients manufacturers' professional samples of controlled substances and devices that he is authorized, in compliance with the provisions of § 54.1-2952.1, to prescribe according to his practice setting and a written agreement with a physician or podiatrist;

9. Interfere with any licensed nurse practitioner with prescriptive authority receiving and dispensing to his own patients manufacturers' professional samples of controlled substances and devices that he is authorized, in compliance with the provisions of § 54.1-2957.01, to prescribe according to his practice setting and a written agreement with a physician;

10. Interfere with any legally qualified practitioner of medicine or osteopathy participating in an indigent patient program offered by a pharmaceutical manufacturer in which the practitioner sends a prescription for one of his own patients to the manufacturer, and the manufacturer donates a stock bottle of the prescription drug ordered at no cost to the practitioner or patient. The practitioner may dispense such medication at no cost to the patient without holding a license to dispense from the Board of Pharmacy. However, the container in which the drug is dispensed shall be labeled in accordance with the requirements of § 54.1-3410, and, unless directed otherwise by the practitioner or the patient, shall meet standards for special packaging as set forth in § 54.1-3426 and Board of Pharmacy regulations. In lieu of dispensing directly to the patient, a practitioner may transfer the donated drug with a valid prescription to a pharmacy for dispensing to the patient. The practitioner or pharmacy participating in the program shall not use the donated drug for any purpose other than dispensing to the patient for whom it was originally donated, except as authorized by the donating manufacturer for another patient meeting that manufacturer's requirements for the indigent patient program. Neither the practitioner nor the pharmacy shall charge the patient for any medication provided through a manufacturer's indigent patient program pursuant to this subdivision. A participating pharmacy may charge a reasonable dispensing or administrative fee to offset the cost of dispensing, not to exceed the comparable allowable fee reimbursed by the Virginia Medicaid program. However, if the patient is unable to pay such fee, the dispensing or administrative fee shall be waived;

11. Interfere with any legally qualified practitioner of medicine or osteopathy from providing controlled substances to his own patients in a free clinic without charge when such controlled substances are donated by an entity other than a pharmaceutical manufacturer as authorized by subdivision 10. The practitioner shall first obtain a controlled substances registration from the Board and shall comply with the labeling and packaging requirements of this chapter and the Board's regulations; or

12. Prevent any pharmacist from providing free health care to an underserved population in Virginia who (i) does not regularly practice pharmacy in Virginia, (ii) holds a current valid license or certificate to practice pharmacy in another state, territory, district or possession of the United States, (iii) volunteers to provide free health care to an underserved area of this Commonwealth under the auspices of a publicly supported all volunteer, nonprofit organization with no paid employees that sponsors the provision of health care to populations of underserved people throughout the world, (iv) files a copy of the license or certificate issued in such other jurisdiction with the Board, (v) notifies the Board at least 15 days prior to the voluntary provision of services of the dates and location of such service, and (vi) acknowledges, in writing, that such licensure exemption shall only be valid, in compliance with the Board's regulations, during the limited period that such free health care is made available through the volunteer, nonprofit organization on the dates and at the location filed with the Board. The Board may deny the right to practice in Virginia to any pharmacist whose license has been previously suspended or revoked, who has been convicted of a felony or who is otherwise found to be in violation of applicable laws or regulations.

This section shall not be construed as exempting any person from the licensure, registration, permitting and record keeping requirements of this chapter or Chapter 34 of this title.

(Code 1950, § 54-481; 1966, c. 171; 1968, c. 582, § 54-524.53; 1970, c. 650, § 54-524.54; 1972, c. 798; 1988, cc. 765, 904; 1989, c. 510; 1998, c. 101; 1999, cc. 745, 750; 2000, c. 924; 2001, c. 465; 2002, cc. 666, 707, 740; 2003, c. 794.)

§ 54.1-3302. Restrictions on practitioners of the healing arts.

A practitioner of the healing arts shall not sell or dispense controlled substances except as provided in §§ 54.1-2914 and 54.1-3304.1. Such exceptions shall extend only to his own patients unless he is licensed to practice pharmacy.

(Code 1950, § 54-481; 1966, c. 171; 1968, c. 582, § 54-524.53; 1970, c. 650; 1972, c. 798; 1988, c. 765; 1989, c. 510.)

§ 54.1-3303. Prescriptions to be issued and drugs to be dispensed for medical or therapeutic purposes only.

A. A prescription for a controlled substance may be issued only by a practitioner of medicine, osteopathy, podiatry, dentistry or veterinary medicine who is authorized to prescribe controlled substances, or by a licensed nurse practitioner pursuant to § 54.1-2957.01, a licensed physician assistant pursuant to § 54.1-2952.1, or a TPA-certified optometrist pursuant to Article 5 (§ 54.1-3222 et seq.) of Chapter 32 of this title. The prescription shall be issued for a medicinal or therapeutic purpose and may be issued only to persons or animals with whom the practitioner has a bona fide practitioner-patient relationship.

For purposes of this section, a bona fide practitioner-patient-pharmacist relationship is one in which a practitioner prescribes, and a pharmacist dispenses, controlled substances in good faith to his patient for a medicinal or therapeutic purpose within the course of his professional practice. In addition, a bona fide practitioner-patient relationship means that the practitioner shall (i) ensure that a medical or drug history is obtained; (ii) provide information to the patient about the

benefits and risks of the drug being prescribed; (iii) perform or have performed an appropriate examination of the patient, either physically or by the use of instrumentation and diagnostic equipment through which images and medical records may be transmitted electronically; except for medical emergencies, the examination of the patient shall have been performed by the practitioner himself, within the group in which he practices, or by a consulting practitioner prior to issuing a prescription; and (iv) initiate additional interventions and follow-up care, if necessary, especially if a prescribed drug may have serious side effects. Any practitioner who prescribes any controlled substance with the knowledge that the controlled substance will be used otherwise than medicinally or for therapeutic purposes shall be subject to the criminal penalties provided in § 18.2-248 for violations of the provisions of law relating to the distribution or possession of controlled substances.

B. In order to determine whether a prescription that appears questionable to the pharmacist results from a bona fide practitioner-patient relationship, the pharmacist shall contact the prescribing practitioner or his agent and verify the identity of the patient and name and quantity of the drug prescribed. The person knowingly filling an invalid prescription shall be subject to the criminal penalties provided in § 18.2-248 for violations of the provisions of law relating to the sale, distribution or possession of controlled substances.

No prescription shall be filled unless there is a bona fide practitioner-patient-pharmacist relationship. A prescription not issued in the usual course of treatment or for authorized research is not a valid prescription.

C. A pharmacist may dispense a controlled substance pursuant to a prescription of an out-of-state practitioner of medicine, osteopathy, podiatry, dentistry or veterinary medicine authorized to issue such prescription if the prescription complies with the requirements of this chapter and Chapter 34 (§ 54.1-3400 et seq.) of this title, known as the "Drug Control Act."

D. A licensed nurse practitioner who is authorized to prescribe controlled substances pursuant to § 54.1-2957.01 may issue prescriptions or provide manufacturers' professional samples for controlled substances and devices as set forth in Chapter 34 of this title in good faith to his patient for a medicinal or therapeutic purpose within the scope of his professional practice.

E. A licensed physician assistant who is authorized to prescribe controlled substances pursuant to § 54.1-2952.1 may issue prescriptions or provide manufacturers' professional samples for controlled substances and devices as set forth in Chapter 34 of this title in good faith to his patient for a medicinal or therapeutic purpose within the scope of his professional practice.

F. A TPA-certified optometrist who is authorized to prescribe controlled substances pursuant to Article 5 (§ 54.1-3222 et seq.) of Chapter 32 of this title may issue prescriptions in good faith or provide manufacturers' professional samples to his patients for medicinal or therapeutic purposes within the scope of his professional practice for the drugs specified on the TPA-Formulary, established pursuant to § 54.1-3223, which shall be limited to (i) oral analgesics included in Schedules III through VI, as defined in §§ 54.1-3450 and 54.1-3455 of the Drug Control Act (§ 54.1-3400 et seq.), which are appropriate to relieve ocular pain, (ii) other oral Schedule VI controlled substances, as defined in § 54.1-3455 of the Drug Control Act, appropriate to treat diseases and abnormal conditions of the human eye and its adnexa, (iii) topically applied Schedule VI drugs, as defined in § 54.1-3455 of the Drug Control Act, and (iv) intramuscular administration of epinephrine for treatment of emergency cases of anaphylactic shock.

G. The requirement for a bona fide practitioner-patient relationship shall be deemed to be satisfied by a member or committee of a hospital's medical staff when approving a standing order or protocol for the administration of influenza vaccinations and pneumococcal vaccinations in a hospital in compliance with § 32.1-126.4.

(1983, c. 528, § 54-524.50:1; 1985, c. 336; 1988, c. 765; 1991, cc. 519, 524; 1992, c. 793; 1996, cc. 152, 158, 408; 1997, c. 806; 1998, c. 101; 1999, c. 745; 2000, cc. 882, 924; 2001, c. 465; 2003, c. 639; 2004, c. 744; 2006, c. 432.)

§ 54.1-3304. Licensing of physicians to dispense drugs; renewals.

For good cause shown, the Board may grant a license to any physician licensed under the laws of Virginia authorizing such physician to dispense drugs to persons to whom a pharmaceutical service is not reasonably available. This license may be renewed annually. Any physician or osteopath so licensed shall be governed by the regulations of the Board of Pharmacy when applicable.

(1976, c. 614, § 54-524.34:1; 1980, c. 288; 1988, c. 765.)

§ 54.1-3304.1. Authority to license and regulate practitioners.

The Board of Pharmacy shall have the authority to license and regulate the dispensing of controlled substances by practitioners of the healing arts.

(1988, c. 904, § 54-524.34:2; 1989, c. 510.)

Selected Laws from Chapter 29. Medicine

§ 54.1-2914. Sale of controlled substances and medical devices or appliances; requirements for vision care services.

A. A practitioner of the healing arts shall not engage in selling controlled substances unless he is licensed to do so by the Board of Pharmacy. However, this prohibition shall not apply to a doctor of medicine, osteopathy or podiatry who administers controlled substances to his patients or provides controlled substances to his patient in a bona fide medical emergency or when pharmaceutical services are not available. Practitioners who sell or dispense controlled substances shall be subject to inspection by the Department of Health Professions to ensure compliance with Chapters 33 (§ 54.1-3300 et seq.) and 34 (§ 54.1-3400 et seq.) of this title and the Board of Pharmacy's regulations. This subsection shall not apply to physicians acting on behalf of the Virginia Department of Health or local health departments.

B. A practitioner of the healing arts who may lawfully sell medical appliances or devices shall not sell such appliances or devices to persons who are not his own patients and shall not sell such articles to his own patients either for his own convenience or for the purpose of supplementing his income. This subsection shall not apply to physicians acting on behalf of the Virginia Department of Health or local health departments.

C. A practitioner of the healing arts may, from within the practitioner's office, engage in selling or promoting the sale of eyeglasses and may dispense contact lenses. Only those practitioners of the healing arts who engage in the examination of eyes and prescribing of eyeglasses may engage in the sale or promotion of eyeglasses. Practitioners shall not employ any unlicensed person to fill prescriptions for eyeglasses within the practitioner's office except as provided in subdivision A 6 of § 54.1-2901. A practitioner may also own, in whole or in part, an optical dispensary located adjacent to or at a distance from his office.

D. Any practitioner of the healing arts engaging in the examination of eyes and prescribing of eyeglasses shall give the patient a copy of any prescription for eyeglasses and inform the patient of his right to have the prescription filled at the establishment of his choice. No practitioner who owns, in whole or in part, an establishment dispensing eyeglasses shall make any statement or take any action, directly or indirectly, that infringes on the patient's right to have a prescription filled at an establishment other than the one in which the practitioner has an ownership interest.

Disclosure of ownership interest by a practitioner as required by § 54.1-2964 or participation by the practitioner in contractual arrangements with third-party payors or purchasers of vision care services shall not constitute a violation of this subsection.

(Code 1950, § 54-317; 1954, c. 627; 1958, c. 161; 1966, cc. 166, 657; 1968, c. 582; 1970, c. 69; 1973, c. 529; 1975, c. 508; 1978, c. 622; 1979, c. 727; 1980, c. 157; 1985, c. 96; 1986, c. 86; 1988, cc. 765, 904; 1989, c. 510; 1994, c. 70; 1998, c. 580; 2001, cc. 268, 858; 2005, c. 163.)

§ 54.1-2952.1. Prescription of certain controlled substances and devices by licensed physician assistant.

A. In accordance with the provisions of this section and pursuant to the requirements of Chapter 33 (§ 54.1-3300 et seq.) of this title, a licensed physician assistant shall have the authority to prescribe controlled substances and devices as set forth in Chapter 34 (§ 54.1-3400 et seq.) of this title as follows: (i) Schedules V and VI controlled substances on and after July 1, 2001, (ii) Schedules IV through VI controlled substances on and after January 1, 2003, and (iii) Schedule III through VI controlled substances on and after July 1, 2004.

A licensed physician assistant shall have such prescriptive authority upon the provision to the Board of Medicine of such evidence as it may require that the assistant has entered into and is, at the time of writing a prescription, a party to a written agreement with a licensed physician or podiatrist which provides for the direction and supervision by such licensee of the prescriptive practices of the assistant. Such written agreements shall include the controlled substances the physician assistant is or is not authorized to prescribe and may restrict such prescriptive authority as deemed appropriate by the physician or podiatrist providing direction and supervision.

B. It shall be unlawful for the assistant to prescribe controlled substances or devices pursuant to this section unless such prescription is authorized by the written agreement between the licensee and the assistant.

C. The Board of Medicine, in consultation with the Board of Pharmacy, shall promulgate such regulations governing the prescriptive authority of physician assistants as are deemed reasonable and necessary to ensure an appropriate standard of care for patients.

The regulations promulgated pursuant to this section shall include, at a minimum, (i) such requirements as may be necessary to ensure continued physician assistant competency that may include continuing education, testing, and/or any other requirement, and shall address the need to promote ethical practice, an appropriate standard of care, patient safety, the use of new pharmaceuticals, and appropriate communication with patients; (ii) requirements for periodic site visits by supervising licensees who supervise and direct assistants who provide services at a location other than where the licensee regularly practices; and (iii) a requirement that the assistant disclose to his patients the name, address and telephone number of the supervising licensee and that he is a physician assistant. A separate office for the assistant shall not be established.

D. This section shall not prohibit a licensed physician assistant from administering controlled substances in compliance with the definition of "administer" in § 54.1-3401 or from receiving and dispensing manufacturers' professional samples of controlled substances in compliance with the provisions of this section.

(1992, c. 793; 1997, c. 806; 1999, c. 745; 2001, c. 465; 2003, c. 510.)

§ 54.1-2957.01. Prescription of certain controlled substances and devices by licensed nurse practitioners.

A. In accordance with the provisions of this section and pursuant to the requirements of Chapter 33 (§ 54.1-3300 et seq.) of this title, a licensed nurse practitioner, other than a certified registered nurse anesthetist, shall have the authority to prescribe controlled substances and devices as set forth in Chapter 34 (§ 54.1-3400 et seq.) of this title as follows: (i) Schedules V and VI controlled substances on and after July 1, 2000; (ii) Schedules IV through VI on and after January 1, 2002; (iii) Schedules III through VI controlled substances on and after July 1, 2003; and (iv) Schedules II through VI on and after July 1, 2006. Nurse practitioners shall have such prescriptive authority upon the provision to the Board of Medicine and the Board of Nursing of such evidence as they may jointly require that the nurse practitioner has entered into and is, at the time of writing a prescription, a party to a written agreement with a licensed physician which provides for the direction and supervision by such physician of the prescriptive practices of the nurse practitioner. Such written agreements shall include the controlled substances the nurse practitioner is or is not authorized to prescribe and may restrict such prescriptive authority as deemed appropriate by the physician providing direction and supervision.

B. It shall be unlawful for a nurse practitioner to prescribe controlled substances or devices pursuant to this section unless such prescription is authorized by the written agreement between the licensed nurse practitioner and the licensed physician.

C. The Board of Nursing and the Board of Medicine, in consultation with the Board of Pharmacy, shall promulgate such regulations governing the prescriptive authority of nurse practitioners as are deemed reasonable and necessary to ensure an appropriate standard of care for patients.

The Board of Medicine and the Board of Nursing shall be assisted in this process by an advisory committee composed of two representatives of the Board of Nursing and one nurse practitioner appointed by the Board of Nursing, and four physicians, three of whom shall be members of the Board of Medicine appointed by the Board of Medicine. The fourth physician member shall be jointly appointed by the Boards of Medicine and Nursing. Regulations promulgated pursuant to this section shall include, at a minimum, (i) such requirements as may be necessary to ensure continued nurse practitioner competency which may include continuing education, testing, and/or any other requirement, and shall address the need to promote ethical practice, an appropriate standard of care, patient safety, the use of new pharmaceuticals, and appropriate communication with patients, and (ii) requirements for periodic site visits by physicians who supervise and direct nurse practitioners who provide services at a location other than where the physician regularly practices.

D. This section shall not limit the functions and procedures of certified registered nurse anesthetists or of any nurse practitioners which are otherwise authorized by law or regulation.

E. The following restrictions shall apply to any nurse practitioner authorized to prescribe drugs and devices pursuant to this section:

1. The nurse practitioner shall disclose to his patients the name, address and telephone number of the supervising physician, and that he is a licensed nurse practitioner.

2. Physicians, other than physicians employed by, or under contract with, local health departments, federally funded comprehensive primary care clinics, or nonprofit health care clinics or programs to provide supervisory services, shall not supervise and direct at any one time more than four nurse practitioners. In the case of nurse practitioners, other than certified nurse midwives, the supervising physician shall regularly practice in any location in which the nurse practitioner

exercises prescriptive authority pursuant to this section. A separate office for the nurse practitioner shall not be established. In the case of certified nurse midwives, the supervising physician either shall regularly practice in the location in which the certified nurse midwife practices, or in the event that the certified nurse midwife has established a separate office, the supervising physician shall be required to make periodic site visits as required by regulations promulgated pursuant to this section.

3. Physicians employed by, or under contract with, local health departments, federally funded comprehensive primary care clinics, or nonprofit health care clinics or programs to provide supervisory services, shall not supervise and direct at any one time more than four nurse practitioners who provide services on behalf of such entities. Such physicians either shall regularly practice in such settings or shall make periodic site visits to such settings as required by regulations promulgated pursuant to this section.

F. This section shall not prohibit a licensed nurse practitioner from administering controlled substances in compliance with the definition of "administer" in § 54.1-3401 or from receiving and dispensing manufacturers' professional samples of controlled substances in compliance with the provisions of this section.

G. Notwithstanding any provision of law or regulation to the contrary, a nurse practitioner licensed by the Boards of Nursing and Medicine in the category of certified nurse midwife and holding a license for prescriptive authority may prescribe Schedules II through VI controlled substances without the requirement for either medical direction or supervision or a written agreement between the licensed nurse practitioner and a licensed physician while participating in a pilot program approved by the Board of Health pursuant to § 32.1-11.5.

(1991, cc. 519, 524; 1992, c. 409; 1995, c. 506; 1999, c. 745; 2000, c. 924; 2005, c. 926; 2006, c. 494.)

§ 54.1-2971.01. Prescription in excess of recommended dosage in certain cases.

A. Consistent with § 54.1-3408.1, a physician may prescribe a dosage of a pain-relieving agent in excess of the recommended dosage upon certifying the medical necessity for the excess dosage in the patient's medical record. Any practitioner who prescribes, dispenses or administers an excess dosage in accordance with this section and § 54.1-3408.1 shall not be in violation of the provisions of this title because of such excess dosage, if such excess dosage is prescribed, dispensed or administered in good faith for recognized medicinal or therapeutic purposes.

B. The Board of Medicine shall advise physicians of the provisions of this section and § 54.1-3408.1.

(1995, c. 277.)

CHAPTER 25.2 Prescription Monitoring Program

§ 54.1-2519. Definitions.

As used in this article, unless the context requires a different meaning:

"Administer" means the direct application of a controlled substance, whether by injection, inhalation, ingestion or any other means, to the body of a patient or research subject by (i) a practitioner or, under the practitioner's direction, his authorized agent or (ii) the patient or research subject at the direction and in the presence of the practitioner.

"Bureau" means the Virginia Department of State Police, Bureau of Criminal Investigation, Drug Diversion Unit.

"Controlled substance" means a drug, substance or immediate precursor in Schedules I through VI of the Drug Control Act, Chapter 34 (§ 54.1-3400 et seq.) of this title.

"Covered substance" means all controlled substances included in Schedules II, III, and IV that are required to be reported to the Prescription Monitoring Program, pursuant to this chapter.

"Department" means the Virginia Department of Health Professions.

"Director" means the Director of the Virginia Department of Health Professions.

"Dispense" means to deliver a controlled substance to an ultimate user or research subject by or pursuant to the lawful order of a practitioner, including the prescribing and administering, packaging, labeling or compounding necessary to prepare the substance for that delivery.

"Dispenser" means a person or entity that (i) is authorized by law to dispense a covered substance or to maintain a stock of covered substances for the purpose of dispensing, and (ii) dispenses the covered substance to a citizen of the Commonwealth regardless of the location of the dispenser, or who dispenses such covered substance from a location in Virginia regardless of the location of the recipient.

"Prescriber" means a practitioner licensed in the Commonwealth who is authorized pursuant to §§ 54.1-3303 and 54.1-3408 to issue a prescription for a covered substance or a practitioner licensed in another state to so issue a prescription for a covered substance.
"Recipient" means a person who receives a covered substance from a dispenser.
"Relevant health regulatory board" means any such board that licenses persons or entities with the authority to prescribe or dispense covered substances, including, but not limited to, the Board of Dentistry, the Board of Medicine, and the Board of Pharmacy.
(2002, c. 481; 2005, cc. 637, 678.)

§ 54.1-2520. Program establishment; Director's regulatory authority.

A. The Director shall establish, maintain, and administer an electronic system to monitor the dispensing of covered substances to be known as the Prescription Monitoring Program. Covered substances shall include all Schedule II, III, and IV controlled substances, as defined in the Drug Control Act (§ 54.1-3400 et seq.).
B. The Director, after consultation with relevant health regulatory boards, shall promulgate, in accordance with the provisions of the Administrative Process Act (§ 2.2-4000 et seq.), such regulations as are necessary to implement the prescription monitoring program as provided in this chapter, including, but not limited to, the establishment of criteria for granting waivers of the reporting requirements set forth in § 54.1-2521.
C. The Director may enter into contracts as may be necessary for the implementation and maintenance of the Prescription Monitoring Program.
D. The Director shall provide dispensers with a basic file layout to enable electronic transmission of the information required in this chapter. For those dispensers unable to transmit the required information electronically, the Director shall provide an alternative means of data transmission.
E. The Director shall also establish an advisory committee within the Department to assist in the implementation and evaluation of the Prescription Monitoring Program.
(2002, c. 481; 2005, cc. 637, 678.)

§ 54.1-2521. Reporting requirements.

A. The failure by any person subject to the reporting requirements set forth in this section and the Department's regulations to report the dispensing of covered substances shall constitute grounds for disciplinary action by the relevant health regulatory board.
B. Upon dispensing a covered substance, a dispenser of such covered substance shall report the following information:
1. The recipient's name and address.
2. The recipient's date of birth.
3. The covered substance that was dispensed to the recipient.
4. The quantity of the covered substance that was dispensed.
5. The date of the dispensing.
6. The prescriber's identifier number.
7. The dispenser's identifier number.
8. Any other non-clinical information that is designated by the Director as necessary for the implementation of this chapter in accordance with the Department's regulations.
9. Any other information specified in regulations promulgated by the Director as required in order for the Prescription Monitoring Program to be eligible to receive federal funds.
C. The reports required herein shall be made and transmitted in such manner and format and according to the standards and schedule established in the Department's regulations.
(2002, c. 481; 2006, c. 167.)

§ 54.1-2522. Reporting exemptions.

The dispensing of covered substances under the following circumstances shall be exempt from the reporting requirements set forth in § 54.1-2521:
1. Dispensing of manufacturers' samples of such covered substances or of covered substances dispensed pursuant to an indigent patient program offered by a pharmaceutical manufacturer.

2. Dispensing of covered substances by a practitioner of the healing arts to his patient in a bona fide medical emergency or when pharmaceutical services are not available.
3. Administering of covered substances.
4. Dispensing of covered substances within an appropriately licensed narcotic maintenance treatment program.
5. Dispensing of covered substances to inpatients in hospitals or nursing facilities licensed by the Board of Health or facilities that are otherwise authorized by law to operate as hospitals or nursing homes in the Commonwealth.
6. Dispensing of covered substances to inpatients in hospices licensed by the Board of Health.
7. Dispensing of covered substances by veterinarians to animals within the usual course of their professional practice.
8. Dispensing of covered substances as otherwise provided in the Department's regulations.
(2002, c. 481.)

§ 54.1-2523. Confidentiality of data; disclosure of information; discretionary authority of Director.

A. All data, records, and reports relating to the prescribing and dispensing of covered substances to recipients and any abstracts from such data, records, and reports that are in the possession of the Prescription Monitoring program pursuant to this chapter and any material relating to the operation or security of the program shall be confidential and shall be exempt from the Virginia Freedom of Information Act (§ 2.2-3700 et seq.) pursuant to subdivision 15 of § 2.2-3705.5. Further, the Director shall only have discretion to disclose any such information as provided in subsections B and C.
B. Upon receiving a request for information in accordance with the Department's regulations and in compliance with applicable federal law and regulations, the Director shall disclose the following:
1. Information relevant to a specific investigation of a specific recipient or of a specific dispenser or prescriber to an agent designated by the superintendent of the Department of State Police to conduct drug diversion investigations pursuant to § 54.1-3405.
2. Information relevant to an investigation or inspection of or allegation of misconduct by a specific person licensed, certified, or registered by or an applicant for licensure, certification, or registration by a health regulatory board; information relevant to a disciplinary proceeding before a health regulatory board or in any subsequent trial or appeal of an action or board order to designated employees of the Department of Health Professions; or to designated persons operating the Health Practitioners' Intervention Program pursuant to Chapter 25.1 (§ 54.1-2515 et seq.) of this title.
3. Information relevant to the proceedings of any investigatory grand jury or special grand jury that has been properly impaneled in accordance with the provisions of Chapter 13 (§ 19.2-191 et seq.) of Title 19.2.
4. Information relevant to a specific investigation of a specific dispenser or specific prescriber to an agent of the United States Drug Enforcement Administration with authority to conduct drug diversion investigations.
C. In accordance with the Department's regulations and applicable federal law and regulations, the Director may, in his discretion, disclose:
1. Information in the possession of the program concerning a recipient who is over the age of 18 to that recipient.
2. Information on a specific recipient to a prescriber, as defined in this chapter, for the purpose of establishing the treatment history of the specific recipient when such recipient is either under care and treatment by the prescriber or the prescriber is initiating treatment of such recipient, and the prescriber has obtained written consent to such disclosure from the recipient.
3. Information on a specific recipient to a dispenser for the purpose of establishing a prescription history to assist the dispenser in determining the validity of a prescription in accordance with § 54.1-3303 when the recipient is seeking a covered substance from the dispenser or the facility in which the dispenser practices. Dispensers shall provide notice to patients, in a manner specified by the Director in regulation, that such information may be requested by them from the Prescription Monitoring Program.
4. Information relevant to an investigation or regulatory proceeding of a specific dispenser or prescriber to other regulatory authorities concerned with granting, limiting or denying licenses, certificates or registrations to practice a health profession when such regulatory authority licenses such dispenser or prescriber or such dispenser or prescriber is seeking licensure by such other regulatory authority.
5. Information relevant to an investigation relating to a specific dispenser or prescriber who is a participating provider in the Virginia Medicaid program or information relevant to an investigation relating to a specific recipient who is currently eligible for and receiving or who has been eligible for and has received medical assistance services to the Medicaid Fraud Control Unit of the Office of the Attorney General or to designated employees of the Department of Medical Assistance Services, as appropriate.

6. Information relevant to determination of the cause of death of a specific recipient to the designated employees of the Office of the Chief Medical Examiner.
7. Information for the purpose of bona fide research or education to qualified personnel; however, data elements that would reasonably identify a specific recipient, prescriber, or dispenser shall be deleted or redacted from such information prior to disclosure. Further, release of the information shall only be made pursuant to a written agreement between such qualified personnel and the Director in order to ensure compliance with this subdivision.
D. This section shall not be construed to supersede the provisions of § 54.1-3406 concerning the divulging of confidential records relating to investigative information.
E. Confidential information that has been received, maintained or developed by any board or disclosed by the board pursuant to subsection A shall not, under any circumstances, be available for discovery or court subpoena or introduced into evidence in any medical malpractice suit or other action for damages arising out of the provision of or failure to provide services. However, this subsection shall not be construed to inhibit any investigation or prosecution conducted pursuant to Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2.
(2002, c. 481; 2004, c. 690; 2005, cc. 637, 678.)

§ 54.1-2523.1. Criteria for indicators of misuse; Director's authority to disclose information; intervention.

The Director shall develop, in consultation with an advisory panel, criteria for indicators of misuse and a method for analysis of data collected by the Prescription Monitoring Program using the criteria for indicators of misuse. Upon the development of such criteria and data analysis, the Director may, in addition to the discretionary disclosure of information pursuant to § 54.1-2523, disclose information using the criteria that indicates potential misuse by recipients of covered substances to their specific prescribers for the purpose of intervention to prevent such misuse.
(2005, cc. 637, 678.)

§ 54.1-2524. Immunity from liability.

A. The Director and the employees of the Department of Health Professions shall not be liable for any civil damages resulting from the accuracy or inaccuracy of any information reported to and compiled and maintained by the Department pursuant to this chapter.
Further, the Director and the employees of the Department of Health Professions shall not be liable for any civil damages resulting from the disclosure of or failure to disclose any information in compliance with subsections B and C of § 54.1-2523 and the Department's regulations.
B. In the absence of gross negligence or willful misconduct, prescribers or dispensers complying in good faith with the reporting requirements of this chapter shall not be liable for any civil damages for any act or omission resulting from the submission of such required reports.
(2002, c. 481.)

§ 54.1-2525. Unlawful disclosure of information; disciplinary action authorized; penalties.

A. It shall be unlawful for any person having access to the confidential information in the possession of the Program or any data or reports produced by the program to disclose such confidential information except as provided in this chapter. Any person having access to the confidential information in the possession of the program or any data or reports produced by the program who discloses such confidential information in violation of this chapter shall be guilty of a Class 1 misdemeanor upon conviction.
B. It shall be unlawful for any person who lawfully receives confidential information from the Prescription Monitoring Program to redisclose or use such confidential information in any way other than the authorized purpose for which the request was made. Any person who lawfully receives information from the Prescription Monitoring Program and discloses such confidential information in violation of this chapter shall be guilty of a Class 1 misdemeanor upon conviction.
C. Unauthorized use or disclosure of confidential information received from the Prescription Monitoring Program shall also be grounds for disciplinary action by the relevant health regulatory board.
(2002, c. 481.)

Selected Sections from Chapter 34. Drug Control Act.

Code of Virginia
Drug Control Act
Chapter 34 of Title 54.1

§ 54.1-3400. Citation.

This chapter may be cited as "The Drug Control Act."
(1970, c. 650, § 54-524.1; 1988, c. 765.)

§ 54.1-3401. Definitions.

As used in this chapter, unless the context requires a different meaning:
"Administer" means the direct application of a controlled substance, whether by injection, inhalation, ingestion or any other means, to the body of a patient or research subject by (i) a practitioner or by his authorized agent and under his direction or (ii) the patient or research subject at the direction and in the presence of the practitioner.
"Advertisement" means all representations disseminated in any manner or by any means, other than by labeling, for the purpose of inducing, or which are likely to induce, directly or indirectly, the purchase of drugs or devices.
"Agent" means an authorized person who acts on behalf of or at the direction of a manufacturer, distributor, or dispenser. It does not include a common or contract carrier, public warehouseman, or employee of the carrier or warehouseman.
"Anabolic steroid" means any drug or hormonal substance, chemically and pharmacologically related to testosterone, other than estrogens, progestins, corticosteroids, and dehydroepiandrosterone.
"Animal" means any nonhuman animate being endowed with the power of voluntary action.
"Automated drug dispensing system" means a mechanical or electronic system that performs operations or activities, other than compounding or administration, relating to pharmacy services, including the storage, dispensing, or distribution of drugs and the collection, control, and maintenance of all transaction information, to provide security and accountability for such drugs.
"Board" means the Board of Pharmacy.
"Bulk drug substance" means any substance that is represented for use, and that, when used in the compounding, manufacturing, processing, or packaging of a drug, becomes an active ingredient or a finished dosage form of the drug; however, "bulk drug substance" shall not include intermediates that are used in the synthesis of such substances.
"Change of ownership" of an existing entity permitted, registered or licensed by the Board means (i) the sale or transfer of all or substantially all of the assets of the entity or of any corporation that owns or controls the entity; (ii) the creation of a partnership by a sole proprietor, the dissolution of a partnership, or change in partnership composition; (iii) the acquisition or disposal of 50 percent or more of the outstanding shares of voting stock of a corporation owning the entity or of the parent corporation of a wholly owned subsidiary owning the entity, except that this shall not apply to any corporation the voting stock of which is actively traded on any securities exchange or in any over-the-counter market; (iv) the merger of a corporation owning the entity or of the parent corporation of a wholly-owned subsidiary owning the entity with another business or corporation; or (v) the expiration or forfeiture of a corporation's charter.
"Compounding" means the combining of two or more ingredients to fabricate such ingredients into a single preparation and includes the mixing, assembling, packaging, or labeling of a drug or device (i) by a pharmacist, or within a permitted pharmacy, pursuant to a valid prescription issued for a medicinal or therapeutic purpose in the context of a bona fide practitioner-patient-pharmacist relationship, or in expectation of receiving a valid prescription based on observed prescribing patterns; (ii) by or for a practitioner of medicine, osteopathy, podiatry, dentistry, or veterinary medicine as an incident to his administering or dispensing, if authorized to dispense, a controlled substance in the course of his professional practice; or (iii) for the purpose of, or as incident to, research, teaching, or chemical analysis and not for sale or for dispensing. The mixing, diluting, or reconstituting of a manufacturer's product drugs for the purpose of administration to a patient, when performed by a practitioner of medicine or osteopathy licensed under Chapter 29 (§ 54.1-2900 et seq.) or a person supervised by such practitioner pursuant to subdivisions 4, 6, or 19 of § 54.1-2901, shall not be considered compounding.

"Controlled substance" means a drug, substance or immediate precursor in Schedules I through VI of this chapter. The term shall not include distilled spirits, wine, malt beverages, or tobacco as those terms are defined or used in Title 3.1 or Title 4.1.
"DEA" means the Drug Enforcement Administration, United States Department of Justice, or its successor agency.
"Deliver" or "delivery" means the actual, constructive, or attempted transfer of any item regulated by this chapter, whether or not there exists an agency relationship.
"Device" means instruments, apparatus, and contrivances, including their components, parts and accessories, intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or animals or to affect the structure or any function of the body of man or animals.
"Dialysis care technician" or "dialysis patient care technician" means an individual who is certified by an organization approved by the Board of Health Professions pursuant to Chapter 27.01 (§ 54.1-2729.1 et seq.) and who, under the supervision of a licensed physician, nurse practitioner, physician assistant or a registered nurse, assists in the care of patients undergoing renal dialysis treatments in a Medicare-certified renal dialysis facility.
"Dialysis solution" means either the commercially available, unopened, sterile solutions whose purpose is to be instilled into the peritoneal cavity during the medical procedure known as peritoneal dialysis, or commercially available solutions whose purpose is to be used in the performance of hemodialysis not to include any solutions administered to the patient intravenously.
"Dispense" means to deliver a drug to an ultimate user or research subject by or pursuant to the lawful order of a practitioner, including the prescribing and administering, packaging, labeling or compounding necessary to prepare the substance for that delivery. However, dispensing shall not include the transportation of drugs mixed, diluted, or reconstituted in accordance with this chapter to other sites operated by such practitioner or that practitioner's medical practice for the purpose of administration of such drugs to patients of the practitioner or that practitioner's medical practice at such other sites. For practitioners of medicine or osteopathy, "dispense" shall only include the provision of drugs by a practitioner to patients to take with them away from the practitioner's place of practice.
"Dispenser" means a practitioner who dispenses.
"Distribute" means to deliver other than by administering or dispensing a controlled substance.
"Distributor" means a person who distributes.
"Drug" means (i) articles or substances recognized in the official United States Pharmacopoeia National Formulary or official Homeopathic Pharmacopoeia of the United States, or any supplement to any of them; (ii) articles or substances intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease in man or animals; (iii) articles or substances, other than food, intended to affect the structure or any function of the body of man or animals; or (iv) articles or substances intended for use as a component of any article specified in clause (i), (ii) or (iii). "Drug" does not include devices or their components, parts or accessories.
"Drug product" means a specific drug in dosage form from a known source of manufacture, whether by brand or therapeutically equivalent drug product name.
"Electronic transmission prescription" means any prescription, other than an oral or written prescription or a prescription transmitted by facsimile machine, that is electronically transmitted directly to a pharmacy without interception or intervention from a third party from a practitioner authorized to prescribe or from one pharmacy to another pharmacy.
"Facsimile (FAX) prescription" means a written prescription or order, which is transmitted by an electronic device over telephone lines that sends the exact image to the receiving pharmacy in hard copy form.
"FDA" means the United States Food and Drug Administration.
"Hashish oil" means any oily extract containing one or more cannabinoids, but shall not include any such extract with a tetrahydrocannabinol content of less than 12 percent by weight.
"Immediate precursor" means a substance which the Board of Pharmacy has found to be and by regulation designates as being the principal compound commonly used or produced primarily for use, and which is an immediate chemical intermediary used or likely to be used in the manufacture of a controlled substance, the control of which is necessary to prevent, curtail, or limit manufacture.
"Label" means a display of written, printed or graphic matter upon the immediate container of any article. A requirement made by or under authority of this chapter that any word, statement or other information appear on the label shall not be considered to be complied with unless such word, statement or other information also appears on the outside container or wrapper, if any, of the retail package of such article, or is easily legible through the outside container or wrapper.
"Labeling" means all labels and other written, printed or graphic matter on an article or any of its containers or wrappers, or accompanying such article.

"Manufacture" means the production, preparation, propagation, conversion or processing of any item regulated by this chapter, either directly or indirectly by extraction from substances of natural origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis, and includes any packaging or repackaging of the substance or labeling or relabeling of its container. This term does not include compounding.

"Manufacturer" means every person who manufactures.

"Marijuana" means any part of a plant of the genus Cannabis whether growing or not, its seeds or resin; and every compound, manufacture, salt, derivative, mixture, or preparation of such plant, its seeds, or its resin. Marijuana shall not include any oily extract containing one or more cannabinoids unless such extract contains less than 12 percent of tetrahydrocannabinol by weight, nor shall marijuana include the mature stalks of such plant, fiber produced from such stalk, oil or cake made from the seeds of such plant, unless such stalks, fiber, oil or cake is combined with other parts of plants of the genus Cannabis.

"Medical equipment supplier" means any person, as defined in § 1-230, engaged in the delivery to the ultimate consumer, pursuant to the lawful order of a practitioner, of hypodermic syringes and needles, medicinal oxygen, Schedule VI controlled devices, those Schedule VI controlled substances with no medicinal properties which are used for the operation and cleaning of medical equipment and solutions for peritoneal dialysis.

"Narcotic drug" means any of the following, whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis: (i) opium, opiates, and any salt, compound, derivative, or preparation of opium or opiates; (ii) any salt, compound, isomer, derivative, or preparation thereof which is chemically equivalent or identical with any of the substances referred to in clause (i), but not including the isoquinoline alkaloids of opium; (iii) opium poppy and poppy straw; (iv) coca leaves and any salt, compound, derivative, or preparation of coca leaves, and any salt, compound, isomer, derivative, or preparation thereof which is chemically equivalent or identical with any of these substances, but not including decocainized coca leaves or extraction of coca leaves which do not contain cocaine or ecgonine.

"New drug" means: (i) any drug, except a new animal drug or an animal feed bearing or containing a new animal drug, the composition of which is such that such drug is not generally recognized, among experts qualified by scientific training and experience to evaluate the safety and effectiveness of drugs, as safe and effective for use under the conditions prescribed, recommended, or suggested in the labeling, except that such a drug not so recognized shall not be deemed to be a "new drug" if at any time prior to the enactment of this chapter it was subject to the Food and Drugs Act of June 30, 1906, as amended, and if at such time its labeling contained the same representations concerning the conditions of its use; or (ii) any drug, except a new animal drug or an animal feed bearing or containing a new animal drug, the composition of which is such that such drug, as a result of investigations to determine its safety and effectiveness for use under such conditions, has become so recognized, but which has not, otherwise than in such investigations, been used to a material extent or for a material time under such conditions.

"Nuclear medicine technologist" means an individual who holds a current certification with the American Registry of Radiological Technologists or the Nuclear Medicine Technology Certification Board.

"Official compendium" means the official United States Pharmacopoeia National Formulary, official Homeopathic Pharmacopoeia of the United States, or any supplement to any of them.

"Official written order" means an order written on a form provided for that purpose by the United States Drug Enforcement Administration, under any laws of the United States making provision therefor, if such order forms are authorized and required by federal law, and if no such order form is provided then on an official form provided for that purpose by the Board of Pharmacy.

"Opiate" means any substance having an addiction-forming or addiction-sustaining liability similar to morphine or being capable of conversion into a drug having such addiction-forming or addiction-sustaining liability. It does not include, unless specifically designated as controlled under Article 4 (§ 54.1-3437 et seq.) of this chapter, the dextrorotatory isomer of 3-methoxy-n-methylmorphinan and its salts (dextromethorphan). It does include its racemic and levorotatory forms.

"Opium poppy" means the plant of the species Papaver somniferum L., except the seeds thereof.

"Original package" means the unbroken container or wrapping in which any drug or medicine is enclosed together with label and labeling, put up by or for the manufacturer, wholesaler, or distributor for use in the delivery or display of such article.

"Person" means both the plural and singular, as the case demands, and includes an individual, partnership, corporation, association, governmental agency, trust, or other institution or entity.

"Pharmacist-in-charge" means the person who, being licensed as a pharmacist, signs the application for a pharmacy permit and assumes full legal responsibility for the operation of the relevant pharmacy in a manner complying with the laws and

regulations for the practice of pharmacy and the sale and dispensing of controlled substances; the "pharmacist-in-charge" shall personally supervise the pharmacy and the pharmacy's personnel as required by § 54.1-3432.
"Poppy straw" means all parts, except the seeds, of the opium poppy, after mowing.
"Practitioner" means a physician, dentist, licensed nurse practitioner pursuant to § 54.1-2957.01, licensed physician assistant pursuant to § 54.1-2952.1, pharmacist pursuant to § 54.1-3300, TPA-certified optometrist pursuant to Article 5 (§ 54.1-3222 et seq.) of Chapter 32, veterinarian, scientific investigator, or other person licensed, registered or otherwise permitted to distribute, dispense, prescribe and administer, or conduct research with respect to, a controlled substance in the course of professional practice or research in the Commonwealth.
"Prescriber" means a practitioner who is authorized pursuant to §§ 54.1-3303 and 54.1-3408 to issue a prescription.
"Prescription" means an order for drugs or medical supplies, written or signed or transmitted by word of mouth, telephone, telegraph or other means of communication to a pharmacist by a duly licensed physician, dentist, veterinarian or other practitioner, authorized by law to prescribe and administer such drugs or medical supplies.
"Prescription drug" means any drug required by federal law or regulation to be dispensed only pursuant to a prescription, including finished dosage forms and active ingredients subject to § 503 (b) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. § 353 (b)).
"Production" or "produce" includes the manufacture, planting, cultivation, growing or harvesting of a controlled substance or marijuana.
"Proprietary medicine" means a completely compounded nonprescription drug in its unbroken, original package which does not contain any controlled substance or marijuana as defined in this chapter and is not in itself poisonous, and which is sold, offered, promoted or advertised directly to the general public by or under the authority of the manufacturer or primary distributor, under a trademark, trade name or other trade symbol privately owned, and the labeling of which conforms to the requirements of this chapter and applicable federal law. However, this definition shall not include a drug which is only advertised or promoted professionally to licensed practitioners, a narcotic or drug containing a narcotic, a drug which may be dispensed only upon prescription or the label of which bears substantially the statement "Warning - may be habit-forming," or a drug intended for injection.
"Radiopharmaceutical" means any drug that exhibits spontaneous disintegration of unstable nuclei with the emission of nuclear particles or photons and includes any non-radioactive reagent kit or radionuclide generator that is intended to be used in the preparation of any such substance, but does not include drugs such as carbon-containing compounds or potassium-containing salts that include trace quantities of naturally occurring radionuclides. The term also includes any biological product that is labeled with a radionuclide or intended solely to be labeled with a radionuclide.
"Sale" includes barter, exchange, or gift, or offer therefor, and each such transaction made by any person, whether as an individual, proprietor, agent, servant or employee.
"Therapeutically equivalent drug products" means drug products that contain the same active ingredients and are identical in strength or concentration, dosage form, and route of administration and that are classified as being therapeutically equivalent by the United States Food and Drug Administration pursuant to the definition of "therapeutically equivalent drug products" set forth in the most recent edition of the Approved Drug Products with Therapeutic Equivalence Evaluations, otherwise known as the "Orange Book."
"USP-NF" means the current edition of the United States Pharmacopeia-National Formulary.
"Warehouser" means any person, other than a wholesale distributor, engaged in the business of selling or otherwise distributing prescription drugs or devices to any person who is not the ultimate user or consumer. No person shall be subject to any state or local tax by reason of this definition.
"Wholesale distribution" means distribution of prescription drugs to persons other than consumers or patients, subject to the exceptions set forth in § 54.1-3401.1.
"Wholesale distributor" means any person engaged in wholesale distribution of prescription drugs including, but not limited to, manufacturers; repackers; own-label distributors; private-label distributors; jobbers; brokers; warehouses, including manufacturers' and distributors' warehouses, chain drug warehouses conducting wholesale distributions, and wholesale drug warehouses; independent wholesale drug traders; and retail pharmacies conducting wholesale distributions. No person shall be subject to any state or local tax as a wholesale merchant by reason of this definition.
The words "drugs" and "devices" as used in Chapter 33 (§ 54.1-3300 et seq.) and in this chapter shall not include surgical or dental instruments, physical therapy equipment, X-ray apparatus or glasses or lenses for the eyes.
The terms "pharmacist," "pharmacy" and "practice of pharmacy" as used in this chapter shall be defined as provided in Chapter 33 unless the context requires a different meaning.
(Code 1950, §§ 54-399, 54-487; 1952, c. 451; 1958, c. 551, § 54-524.2; 1966, c. 193; 1968, c. 582; 1970, c. 650; 1971, Ex. Sess., c. 94; 1972, c. 798; 1975, c. 425; 1976, c. 14; 1977, c. 193; 1978, c. 833; 1979, c. 435; 1980, c. 150; 1988, c.

765; 1991, cc. 519, 524; 1992, cc. 737, 793; 1996, cc. 37, 152, 158, 407, 408; 1997, cc. 20, 677, 806; 1998, c. 470; 1999, cc. 661, 750; 2000, cc. 861, 878, 935; 2003, cc. 509, 639, 995; 2005, cc. 475, 839; 2006, c. 346.)

§ 54.1-3401.1. Practices not considered wholesale distribution.

A. Wholesale distribution, as defined in § 54.1-3401, shall not include:
1. Intracompany sales, including any transaction or transfer between any division, subsidiary, parent, and/or affiliated or related company under the common ownership and control of a corporate entity;
2. The purchase or other acquisition by a hospital or other health care entity that is a member of a group purchasing organization of a drug for its own use from the group purchasing organization or from other hospitals or health care entities that are members of such organization;
3. The sale, purchase, or trade of a drug or an offer to sell, purchase, or trade a drug by a charitable organization, described in § 501 (c) (3) of the Internal Revenue Code of 1986 (26 U.S.C. § 501 (c) (3)), to a nonprofit affiliate of such organization to the extent otherwise permitted by law;
4. The sale, purchase, or trade of a drug or an offer to sell, purchase, or trade a drug among hospitals or other health care entities that are under common control;
5. The sale, purchase, or trade of a drug or an offer to sell, purchase, or trade a drug for emergency medical reasons;
6. The sale, purchase, or trade of a drug or an offer to sell, purchase, or trade a drug, or the dispensing of a drug pursuant to a prescription;
7. The distribution of drug samples by manufacturers' representatives or distributors' representatives; or
8. The sale, purchase, or trade of or the offer to sell, purchase, or trade blood and blood components intended for transfusion.
B. For the purposes of this section:
"Blood" means whole blood collected from a single donor and processed either for transfusion or further manufacturing.
"Blood component" means that part of blood separated by physical or mechanical means.
"Common control" means the power to direct or cause the direction of the management and policies of a person or an organization, whether by ownership of stock, voting rights, by contract, or otherwise.
"Drug sample" means a unit of a prescription drug that is not intended to be sold and is intended to promote the sale of the drug.
"Emergency medical reasons" includes transfers of prescription drugs by a retail pharmacy to another retail pharmacy to alleviate a temporary shortage arising from delays in or interruptions of regular distribution schedules.
(1992, c. 737.)

§ 54.1-3404. Inventories of controlled substances required of certain persons; contents and form of record.

A. Except as set forth in subsection G, every person manufacturing, compounding, processing, selling, dispensing or otherwise disposing of drugs in Schedules I, II, III, IV or V shall take a complete and accurate inventory of all stocks of Schedules I through V drugs on the date he first engages in business. If there are no controlled substances on hand at that time, he shall record this fact as part of the inventory. An inventory taken by use of an oral recording device shall be promptly reduced to writing and maintained in a written, typewritten or printed form. Such inventory shall be made either as of the opening of business or as of the close of business on the inventory date.
B. After the initial inventory is taken, every person described herein shall take a new inventory at least every two years of all stocks on hand of Schedules I through V drugs. The biennial inventory shall be taken on any date which is within two years of the previous biennial inventory.
C. The record of such drugs received shall in every case show the date of receipt, the name and address of the person from whom received and the kind and quantity of drugs received, the kind and quantity of drugs produced or removed from process of manufacture, and the date of such production or removal from process of manufacture. The record shall in every case show the proportion of morphine, cocaine, or ecgonine contained in or producible from crude opium or coca leaves received or produced.
D. The record of all drugs sold, administered, dispensed, or otherwise disposed of, shall show the date of selling, administering, or dispensing, the name and address of the person to whom or for whose use, or the owner and species of animal for which the drugs were sold, administered or dispensed, and the kind and quantity of drugs. Any person selling, administering, dispensing or otherwise disposing of such drugs shall make and sign such record at the time of each

transaction. The keeping of a record required by or under the federal laws, containing substantially the same information as is specified above, shall constitute compliance with this section, except that every such record shall contain a detailed list of any drugs lost, destroyed or stolen, the kind and quantity of such drugs, and the date of the discovery of such loss, destruction or theft. The form of records shall be prescribed by the Board.
E. Whenever any registrant or licensee discovers a theft or any other unusual loss of any controlled substance, he shall immediately report such theft or loss to the Board. If the registrant or licensee is unable to determine the exact kind and quantity of the drug loss, he shall immediately make a complete inventory of all Schedule I through V drugs.
Within 30 days after the discovery of a loss of drugs, the registrant or licensee shall furnish the Board with a listing of the kind, quantity and strength of such drugs lost.
F. All records required pursuant to this section shall be maintained completely and accurately for two years from the date of the transaction recorded.
G. Each person authorized to conduct chemical analyses using controlled substances in the Department of Forensic Science shall comply with the inventory requirements set forth in subsections A through F; however, the following substances shall not be required to be included in such inventory: (i) controlled substances on hand at the time of the inventory in a quantity of less than one kilogram, other than a hallucinogenic controlled substance listed in Schedule I of this chapter; or (ii) hallucinogenic controlled substances, other than lysergic acid diethylamide, on hand at the time of the inventory in a quantity of less than 20 grams; or (iii) lysergic acid diethylamide on hand at the time of the inventory in a quantity of less than 0.5 grams. Further, no inventory shall be required of known or suspected controlled substances that have been received as evidentiary materials for analyses by the Department of Forensic Science.
(1970, c. 650, § 54-524.56; 1972, c. 798; 1978, c. 833; 1979, c. 435; 1980, c. 203; 1982, c. 278; 1988, c. 765; 1998, c. 105; 2004, c. 51; 2005, cc. 868, 881.)

§ 54.1-3405. Access to and copies of records; inspections.

Every person required to prepare or obtain, and keep, records, and any carrier maintaining records with respect to any shipment containing any drug, and every person in charge or having custody of such records shall, upon request of an agent designated by the Board, permit such agent at reasonable times to have access to and copy such records.
Any agent designated by the Superintendent of the Department of State Police to conduct drug diversion investigations shall, for the purpose of such investigations, also be permitted access at reasonable times to all such records relevant to a specific investigation and be allowed to inspect and copy such records. However, agents designated by the Superintendent of the Department of State Police to conduct drug diversion investigations shall not copy and remove patient records unless such patient records are relevant to a specific investigation. Any agent designated by the Superintendent of the Department of State Police shall allow the person or carrier maintaining such records, or agent thereof, to examine any copies of records before their removal from the premises. If the agent designated by the Superintendent of State Police copies records on magnetic storage media, he will deliver a duplicate of the magnetic storage media on which the copies are stored to the person or carrier maintaining such records or an agent thereof, prior to removing the copies from the premises. If the original of any record is removed by any agent designated by the Superintendent of State Police, a receipt therefor shall be left with the person or carrier maintaining such records or an agent thereof, and a copy of the removed record shall be provided the person or carrier maintaining such records within a reasonable time thereafter.
For the purposes of verification of such records and of enforcement of this chapter, agents designated by the Board or by the Superintendent are authorized, upon presenting appropriate credentials to the owner, operator, or agent in charge, to enter, at reasonable times, any factory, warehouse, establishment, or vehicle in which any drug is held, manufactured, compounded, processed, sold, delivered, or otherwise disposed of; and to inspect, within reasonable limits and in a reasonable manner, such factory, warehouse, establishment, or vehicle, and all pertinent equipment, finished and unfinished material, containers and labeling, including records, files, papers, processes, controls, and facilities, bearing on violation of this chapter; and to inventory and obtain samples of any stock of any drugs.
If a sample of any drug is obtained, the agent making the inspection shall, upon completion of the inspection and before leaving the premises, give to the owner, operator, or agent in charge a receipt describing the sample. No inspection shall extend to financial data, sales data other than shipment data, pricing data, personnel data or research data.
Any information obtained by a designated State Police agent during an inspection under this section which constitutes evidence of a violation of any provision of this chapter shall be reported to the Department of Health Professions upon its discovery.

Any information obtained by an agent designated by the Board during an inspection under this section which constitutes evidence of a violation of Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2 shall be reported to the Department of State Police upon its discovery.
(1970, c. 650, § 54-524.57; 1988, cc. 266, 765; 1992, cc. 743, 808.)

§ 54.1-3406. Records confidential.

No agent of the Board or agent designated by the Superintendent of the Department of State Police having knowledge by virtue of his office of any prescriptions, papers, records, or stocks of drugs shall divulge such knowledge, except in connection with a criminal investigation authorized by the Attorney General or attorney for the Commonwealth or with a prosecution or proceeding in court or before a regulatory board or officer, to which investigation, prosecution or proceeding the person to whom such prescriptions, papers or records relate is a subject or party. This section shall not be construed to prohibit the Board president or his designee and the Director of the Department of Health Professions from discharging their duties as provided in this title.
(Code 1950, § 54-512; 1970, c. 650; 1983, c. 528, § 54-524.58; 1988, cc. 266, 765.)

§ 54.1-3408. Professional use by practitioners.

A. A practitioner of medicine, osteopathy, podiatry, dentistry, or veterinary medicine or a licensed nurse practitioner pursuant to § 54.1-2957.01, a licensed physician assistant pursuant to § 54.1-2952.1, or a TPA-certified optometrist pursuant to Article 5 (§ 54.1-3222 et seq.) of Chapter 32 of this title shall only prescribe, dispense, or administer controlled substances in good faith for medicinal or therapeutic purposes within the course of his professional practice.
B. The prescribing practitioner's order may be on a written prescription or pursuant to an oral prescription as authorized by this chapter. The prescriber may administer drugs and devices, or he may cause them to be administered by a nurse, physician assistant or intern under his direction and supervision, or he may prescribe and cause drugs and devices to be administered to patients in state-owned or state-operated hospitals or facilities licensed as hospitals by the Board of Health or psychiatric hospitals licensed by the State Mental Health, Mental Retardation and Substance Abuse Services Board by other persons who have been trained properly to administer drugs and who administer drugs only under the control and supervision of the prescriber or a pharmacist or a prescriber may cause drugs and devices to be administered to patients by emergency medical services personnel who have been certified and authorized to administer such drugs and devices pursuant to Board of Health regulations governing emergency medical services and who are acting within the scope of such certification. A prescriber may authorize a licensed respiratory care practitioner as defined in § 54.1-2954 to administer by inhalation controlled substances used in inhalation or respiratory therapy.
C. Pursuant to an oral or written order or standing protocol, the prescriber, who is authorized by state or federal law to possess and administer radiopharmaceuticals in the scope of his practice, may authorize a nuclear medicine technologist to administer, under his supervision, radiopharmaceuticals used in the diagnosis or treatment of disease.
D. Pursuant to an oral or written order or standing protocol issued by the prescriber within the course of his professional practice, such prescriber may authorize registered nurses and licensed practical nurses to possess (i) epinephrine for administration in treatment of emergency medical conditions and (ii) heparin and sterile normal saline to use for the maintenance of intravenous access lines.
Pursuant to the regulations of the Board of Health, certain emergency medical services technicians may possess and administer epinephrine in emergency cases of anaphylactic shock.
E. Pursuant to an oral or written order or standing protocol issued by the prescriber within the course of his professional practice, such prescriber may authorize licensed physical therapists to possess and administer topical corticosteroids, topical lidocaine, and any other Schedule VI topical drug.
F. Pursuant to an oral or written order or standing protocol issued by the prescriber within the course of his professional practice, such prescriber may authorize licensed athletic trainers to possess and administer topical corticosteroids, topical lidocaine, or other Schedule VI topical drugs, or to possess and administer epinephrine for use in emergency cases of anaphylactic shock.
G. Pursuant to an oral or written order or standing protocol issued by the prescriber within the course of his professional practice, and in accordance with policies and guidelines established by the Department of Health pursuant to § 32.1-50.2, such prescriber may authorize registered nurses or licensed practical nurses under the immediate and direct supervision of a registered nurse to possess and administer tuberculin purified protein derivative (PPD) in the absence of a prescriber.

The Department of Health's policies and guidelines shall be consistent with applicable guidelines developed by the Centers for Disease Control and Prevention for preventing transmission of mycobacterium tuberculosis and shall be updated to incorporate any subsequently implemented standards of the Occupational Safety and Health Administration and the Department of Labor and Industry to the extent that they are inconsistent with the Department of Health's policies and guidelines. Such standing protocols shall explicitly describe the categories of persons to whom the tuberculin test is to be administered and shall provide for appropriate medical evaluation of those in whom the test is positive. The prescriber shall ensure that the nurse implementing such standing protocols has received adequate training in the practice and principles underlying tuberculin screening.

The Health Commissioner or his designee may authorize registered nurses, acting as agents of the Department of Health, to possess and administer, at the nurse's discretion, tuberculin purified protein derivative (PPD) to those persons in whom tuberculin skin testing is indicated based on protocols and policies established by the Department of Health.

H. Pursuant to a written order or standing protocol issued by the prescriber within the course of his professional practice, such prescriber may authorize, with the consent of the parents as defined in § 22.1-1, an employee of a school board who is trained in the administration of insulin and glucagon to assist with the administration of insulin or administer glucagon to a student diagnosed as having diabetes and who requires insulin injections during the school day or for whom glucagon has been prescribed for the emergency treatment of hypoglycemia. Such authorization shall only be effective when a licensed nurse, nurse practitioner, physician or physician assistant is not present to perform the administration of the medication.

I. A prescriber may authorize, pursuant to a protocol approved by the Board of Nursing, the administration of vaccines to adults for immunization, when a practitioner with prescriptive authority is not physically present, (i) by licensed pharmacists, (ii) by registered nurses, or (iii) licensed practical nurses under the immediate and direct supervision of a registered nurse. A prescriber acting on behalf of and in accordance with established protocols of the Department of Health may authorize the administration of vaccines to any person by a pharmacist or nurse when the prescriber is not physically present.

J. A dentist may cause Schedule VI topical drugs to be administered under his direction and supervision by either a dental hygienist or by an authorized agent of the dentist.

Further, pursuant to a written order and in accordance with a standing protocol issued by the dentist in the course of his professional practice, a dentist may authorize a dental hygienist under his general supervision, as defined in § 54.1-2722, to possess and administer topical oral fluorides, topical oral anesthetics, topical and directly applied antimicrobial agents for treatment of periodontal pocket lesions, as well as any other Schedule VI topical drug approved by the Board of Dentistry.

In addition, a dentist may authorize a dental hygienist under his direction to administer Schedule VI nitrous oxide and oxygen inhalation analgesia and, to persons 18 years of age or older, Schedule VI local anesthesia.

K. (For expiration date - See Editor's note) This section shall not prevent the administration of drugs by a person who has satisfactorily completed a training program for this purpose approved by the Board of Nursing and who administers such drugs in accordance with a physician's instructions pertaining to dosage, frequency, and manner of administration, and in accordance with regulations promulgated by the Board of Pharmacy relating to security and record keeping, when the drugs administered would be normally self-administered by (i) a resident of a facility licensed or certified by the State Mental Health, Mental Retardation and Substance Abuse Services Board; (ii) a resident of any assisted living facility which is licensed by the Department of Social Services; (iii) a resident of the Virginia Rehabilitation Center for the Blind and Vision Impaired; (iv) a resident of a facility approved by the Board or Department of Juvenile Justice for the placement of children in need of services or delinquent or alleged delinquent youth; (v) a program participant of an adult day-care center licensed by the Department of Social Services; or (vi) a resident of any facility authorized or operated by a state or local government whose primary purpose is not to provide health care services.

K. (For effective date - see Editor's note) This section shall not prevent the administration of drugs by a person who has satisfactorily completed a training program for this purpose approved by the Board of Nursing and who administers such drugs in accordance with a physician's instructions pertaining to dosage, frequency, and manner of administration, and in accordance with regulations promulgated by the Board of Pharmacy relating to security and record keeping, when the drugs administered would be normally self-administered by (i) a resident of a facility licensed or certified by the Department of Mental Health, Mental Retardation and Substance Abuse Services; (ii) a resident of the Virginia Rehabilitation Center for the Blind and Vision Impaired; (iii) a resident of a facility approved by the Board or Department of Juvenile Justice for the placement of children in need of services or delinquent or alleged delinquent youth; (iv) a program participant of an adult day-care center licensed by the Department of Social Services; or (v) a resident of any

facility authorized or operated by a state or local government whose primary purpose is not to provide health care services.

L. (For effective date - see Editor's note) Medication aides registered by the Board of Nursing pursuant to Article 7 (§ 54.1-3041 et seq.) of Chapter 30 may administer drugs that would otherwise be self-administered to residents of any assisted living facility licensed by the Department of Social Services. A registered medication aide shall administer drugs pursuant to this section in accordance with the prescriber's instructions pertaining to dosage, frequency, and manner of administration; in accordance with regulations promulgated by the Board of Pharmacy relating to security and recordkeeping; in accordance with the assisted living facility's Medication Management Plan; and in accordance with such other regulations governing their practice promulgated by the Board of Nursing.

M. In addition, this section shall not prevent the administration of drugs by a person who administers such drugs in accordance with a physician's instructions pertaining to dosage, frequency, and manner of administration and with written authorization of a parent, and in accordance with school board regulations relating to training, security and record keeping, when the drugs administered would be normally self-administered by a student of a Virginia public school. Training for such persons shall be accomplished through a program approved by the local school boards, in consultation with the local departments of health.

N. In addition, this section shall not prevent the administration of drugs by a person to a child in a child day program as defined in § 63.2-100 and regulated by the State Board of Social Services or the Child Day Care Council, provided such person (i) has satisfactorily completed a training program for this purpose approved by the Board of Nursing and taught by a registered nurse, licensed practical nurse, doctor of medicine or osteopathic medicine, or pharmacist; (ii) has obtained written authorization from a parent or guardian; (iii) administers drugs only to the child identified on the prescription label in accordance with the prescriber's instructions pertaining to dosage, frequency, and manner of administration; and (iv) administers only those drugs that were dispensed from a pharmacy and maintained in the original, labeled container that would normally be administered by a parent or guardian to the child.

O. In addition, this section shall not prevent the administration or dispensing of drugs and devices by persons if they are authorized by the State Health Commissioner in accordance with protocols established by the State Health Commissioner pursuant to § 32.1-42.1 when (i) the Governor has declared a disaster or a state of emergency caused by an act of terrorism or the United States Secretary of Health and Human Services has issued a declaration of an actual or potential bioterrorism incident or other actual or potential public health emergency; (ii) it is necessary to permit the provision of needed drugs or devices; and (iii) such persons have received the training necessary to safely administer or dispense the needed drugs or devices. Such persons shall administer or dispense all drugs or devices under the direction, control and supervision of the State Health Commissioner.

P. Nothing in this title shall prohibit the administration of normally self-administered oral or topical drugs by unlicensed individuals to a person in his private residence.

Q. This section shall not interfere with any prescriber issuing prescriptions in compliance with his authority and scope of practice and the provisions of this section to a Board agent for use pursuant to subsection G of § 18.2-258.1. Such prescriptions issued by such prescriber shall be deemed to be valid prescriptions.

R. Nothing in this title shall prevent or interfere with dialysis care technicians or dialysis patient care technicians who are certified by an organization approved by the Board of Health Professions or persons authorized for provisional practice pursuant to Chapter 27.01 (§ 54.1-2729.1 et seq.) of this title, in the ordinary course of their duties in a Medicare-certified renal dialysis facility, from administering heparin, topical needle site anesthetics, dialysis solutions, sterile normal saline solution, and blood volumizers, for the purpose of facilitating renal dialysis treatment, when such administration of medications occurs under the orders of a licensed physician, nurse practitioner or physician assistant and under the immediate and direct supervision of a licensed registered nurse. Nothing in this chapter shall be construed to prohibit a patient care dialysis technician trainee from performing dialysis care as part of and within the scope of the clinical skills instruction segment of a supervised dialysis technician training program, provided such trainee is identified as a "trainee" while working in a renal dialysis facility.

The dialysis care technician or dialysis patient care technician administering the medications shall have demonstrated competency as evidenced by holding current valid certification from an organization approved by the Board of Health Professions pursuant to Chapter 27.01 (§ 54.1-2729.1 et seq.) of this title.

S. Persons who are otherwise authorized to administer controlled substances in hospitals shall be authorized to administer influenza or pneumococcal vaccines pursuant to § 32.1-126.4.

(Code 1950, § 54-497; 1956, c. 225; 1970, c. 650, § 54-524.65; 1973, c. 468; 1976, cc. 358, 614; 1977, c. 302; 1978, c. 224; 1980, cc. 270, 287; 1983, cc. 456, 528; 1984, cc. 141, 555; 1986, c. 81; 1987, c. 226; 1988, c. 765; 1990, c. 309; 1991, cc. 141, 519, 524, 532; 1992, cc. 610, 760, 793; 1993, cc. 15, 810, 957, 993; 1994, c. 53; 1995, cc. 88, 529; 1996,

cc. 152, 158, 183, 406, 408, 490; 1997, cc. 272, 566, 806, 906; 1998, c. 112; 1999, c. 570; 2000, cc. 135, 498, 861, 881, 935; 2003, cc. 465, 497, 515, 794, 995, 1020; 2005, cc. 113, 610, 924; 2006, cc. 75, 432, 686, 858.)

§ 54.1-3408.01. Requirements for prescriptions.

A. The written prescription referred to in § 54.1-3408 shall be written with ink or individually typed or printed. The prescription shall contain the name, address, and telephone number of the prescriber. A prescription for a controlled substance other than one controlled in Schedule VI shall also contain the federal controlled substances registration number assigned to the prescriber. The prescriber's information shall be either preprinted upon the prescription blank, electronically printed, typewritten, rubber stamped, or printed by hand.

The written prescription shall contain the first and last name of the patient for whom the drug is prescribed. The address of the patient shall either be placed upon the written prescription by the prescriber or his agent, or by the dispenser of the prescription. If not otherwise prohibited by law, the dispenser may record the address of the patient in an electronic prescription dispensing record for that patient in lieu of recording it on the prescription. Each written prescription shall be dated as of, and signed by the prescriber on, the day when issued. The prescription may be prepared by an agent for the prescriber's signature.

This section shall not prohibit a prescriber from using preprinted prescriptions for drugs classified in Schedule VI if all requirements concerning dates, signatures, and other information specified above are otherwise fulfilled.

No written prescription order form shall include more than one prescription. However, this provision shall not apply (i) to prescriptions written as chart orders for patients in hospitals and long-term-care facilities, patients receiving home infusion services or hospice patients, or (ii) to a prescription ordered through a pharmacy operated by or for the Department of Corrections or the Department of Juvenile Justice, the central pharmacy of the Department of Health, or the central outpatient pharmacy operated by the Department of Mental Health, Mental Retardation and Substance Abuse Services; or (iii) to prescriptions written for patients residing in adult and juvenile detention centers, local or regional jails, or work release centers operated by the Department of Corrections.

B. Prescribers' orders, whether written as chart orders or prescriptions, for Schedules II, III, IV and V controlled drugs to be administered to (i) patients or residents of long-term care facilities served by a Virginia pharmacy from a remote location or (ii) patients receiving parenteral, intravenous, intramuscular, subcutaneous or intraspinal infusion therapy and served by a home infusion pharmacy from a remote location, may be transmitted to that remote pharmacy by an electronic communications device over telephone lines which send the exact image to the receiver in hard copy form, and such facsimile copy shall be treated as a valid original prescription order. If the order is for a radiopharmaceutical, a physician authorized by state or federal law to possess and administer medical radioactive materials may authorize a nuclear medicine technologist to transmit a prescriber's verbal or written orders for radiopharmaceuticals.

C. The oral prescription referred to in § 54.1-3408 shall be transmitted to the pharmacy of the patient's choice by the prescriber or his authorized agent. For the purposes of this section, an authorized agent of the prescriber shall be an employee of the prescriber who is under his immediate and personal supervision, or if not an employee, an individual who holds a valid license allowing the administration or dispensing of drugs and who is specifically directed by the prescriber.
(2000, cc. 135, 861; 2002, c. 411; 2003, c. 639; 2006, c. 195.)

§ 54.1-3408.02. Transmission of prescriptions.

Consistent with federal law and in accordance with regulations promulgated by the Board, prescriptions may be transmitted to a pharmacy by electronic transmission or by facsimile machine and shall be treated as valid original prescriptions.
(2000, c. 878.)

§ 54.1-3408.03. Dispensing of therapeutically equivalent drug product permitted.

A. A pharmacist may dispense a therapeutically equivalent drug product for a prescription that is written for a brand-name drug product unless (i) the prescriber indicates such substitution is not authorized by specifying on the prescription, "brand medically necessary" or (ii) the patient insists on the dispensing of the brand-name drug product.

In the case of an oral prescription, the prescriber's oral dispensing instructions regarding substitution shall be followed.

B. Prescribers using prescription blanks printed in compliance with Virginia law in effect on June 30, 2003, having two check boxes and referencing the Virginia Voluntary Formulary, may indicate, until July 1, 2006, that substitution is not

authorized by checking the "Dispense as Written" box. If the "Voluntary Formulary Permitted" box is checked on such prescription blanks or if neither box is checked, a pharmacist may dispense a therapeutically equivalent drug product pursuant to such prescriptions.
C. If the pharmacist dispenses a drug product other than the brand name prescribed, he shall so inform the purchaser and shall indicate, unless otherwise directed by the prescriber, on both his permanent record and the prescription label, the brand name or, in the case of a therapeutically equivalent drug product, the name of the manufacturer or the distributor. Whenever a pharmacist dispenses a therapeutically equivalent drug product pursuant to a prescription written for a brand-name product, the pharmacist shall label the drug with the name of the therapeutically equivalent drug product followed by the words "generic for" and the brand name of the drug for which the prescription was written.
D. When a pharmacist dispenses a drug product other than the drug product prescribed, the dispensed drug product shall be at a lower retail price than that of the drug product prescribed. Such retail price shall not exceed the usual and customary retail price charged by the pharmacist for the dispensed therapeutically equivalent drug product.
(2003, c. 639.)

§ 54.1-3408.1. Prescription in excess of recommended dosage in certain cases.

In the case of a patient with intractable pain, a physician may prescribe a dosage in excess of the recommended dosage of a pain relieving agent if he certifies the medical necessity for such excess dosage in the patient's medical record. Any person who prescribes, dispenses or administers an excess dosage in accordance with this section shall not be in violation of the provisions of this title because of such excess dosage, if such excess dosage is prescribed, dispensed or administered in good faith for accepted medicinal or therapeutic purposes.
Nothing in this section shall be construed to grant any person immunity from investigation or disciplinary action based on the prescription, dispensing or administration of an excess dosage in violation of this title.
(1988, c. 870, § 54-524.65:1; 1990, c. 681; 1995, c. 277.)

§ 54.1-3409. Professional use by veterinarians.

A veterinarian may not prescribe controlled substances for human use and shall only prescribe, dispense or administer a controlled substance in good faith for use by animals within the course of his professional practice. He may prescribe, on a written prescription or on oral prescription as authorized by § 54.1-3410. He may administer drugs, and he may cause them to be administered by an assistant or orderly under his direction and supervision. Such a prescription shall be dated and signed by the person prescribing on the day when issued, and shall bear the full name and address of the owner of the animal, and the species of the animal for which the drug is prescribed and the full name, address and registry number, under the federal laws of the person prescribing, if he is required by those laws to be so registered.
(Code 1950, § 54-498; 1956, c. 225; 1970, c. 650, § 54-524.66; 1983, c. 528; 1988, c. 765.)

§ 54.1-3410. When pharmacist may sell and dispense drugs.

A. A pharmacist, acting in good faith, may sell and dispense drugs and devices to any person pursuant to a prescription of a prescriber as follows:
1. A drug listed in Schedule II shall be dispensed only upon receipt of a written prescription that is properly executed, dated and signed by the person prescribing on the day when issued and bearing the full name and address of the patient for whom, or of the owner of the animal for which, the drug is dispensed, and the full name, address, and registry number under the federal laws of the person prescribing, if he is required by those laws to be so registered. If the prescription is for an animal, it shall state the species of animal for which the drug is prescribed;
2. In emergency situations, Schedule II drugs may be dispensed pursuant to an oral prescription in accordance with the Board's regulations;
3. Whenever a pharmacist dispenses any drug listed within Schedule II on a prescription issued by a prescriber, he shall affix to the container in which such drug is dispensed, a label showing the prescription serial number or name of the drug; the date of initial filling; his name and address, or the name and address of the pharmacy; the name of the patient or, if the patient is an animal, the name of the owner of the animal and the species of the animal; the name of the prescriber by whom the prescription was written, except for those drugs dispensed to a patient in a hospital pursuant to a chart order; and such directions as may be stated on the prescription.

B. A drug controlled by Schedules III through VI or a device controlled by Schedule VI shall be dispensed upon receipt of a written or oral prescription as follows:
1. If the prescription is written, it shall be properly executed, dated and signed by the person prescribing on the day when issued and bear the full name and address of the patient for whom, or of the owner of the animal for which, the drug is dispensed, and the full name and address of the person prescribing. If the prescription is for an animal, it shall state the species of animal for which the drug is prescribed.
2. If the prescription is oral, the prescriber shall furnish the pharmacist with the same information as is required by law in the case of a written prescription for drugs and devices, except for the signature of the prescriber.
A pharmacist who dispenses a Schedule III through VI drug or device shall label the drug or device as required in subdivision A 3 of this section.
C. A drug controlled by Schedule VI may be refilled without authorization from the prescriber if, after reasonable effort has been made to contact him, the pharmacist ascertains that he is not available and the patient's health would be in imminent danger without the benefits of the drug. The refill shall be made in compliance with the provisions of § 54.1-3411.
If the written or oral prescription is for a Schedule VI drug or device and does not contain the address or registry number of the prescriber, or the address of the patient, the pharmacist need not reduce such information to writing if such information is readily retrievable within the pharmacy.
D. Pursuant to authorization of the prescriber, an agent of the prescriber on his behalf may orally transmit a prescription for a drug classified in Schedules III through VI if, in such cases, the written record of the prescription required by this subsection specifies the full name of the agent of the prescriber transmitting the prescription.
(1970, c. 650, § 54-524.67; 1972, c. 798; 1976, c. 614; 1977, c. 302; 1983, cc. 395, 612; 1988, c. 765; 1996, c. 408; 2003, c. 511.)

§ 54.1-3410.2. Compounding; pharmacists' authority to compound under certain conditions; labeling and record maintenance requirements.

A. A pharmacist may engage in compounding of drug products when the dispensing of such compounded products is (i) pursuant to valid prescriptions for specific patients and (ii) consistent with the provisions of § 54.1-3303 relating to the issuance of prescriptions and the dispensing of drugs.
Pharmacists shall label all compounded drug products that are dispensed pursuant to a prescription in accordance with this chapter and the Board's regulations, and shall include on the labeling an appropriate beyond-use date as determined by the pharmacist in compliance with USP-NF standards for pharmacy compounding.
B. A pharmacist may also engage in compounding of drug products in anticipation of receipt of prescriptions based on a routine, regularly observed prescribing pattern.
Pharmacists shall label all products compounded prior to dispensing with (i) the name and strength of the compounded medication or a list of the active ingredients and strengths; (ii) the pharmacy's assigned control number that corresponds with the compounding record; (iii) an appropriate beyond-use date as determined by the pharmacist in compliance with USP-NF standards for pharmacy compounding; and (iv) the quantity.
C. In accordance with the conditions set forth in subsections A and B, pharmacists shall not distribute compounded drug products for subsequent distribution or sale to other persons or to commercial entities, including distribution to pharmacies or other entities under common ownership or control with the facility in which such compounding takes place. A pharmacist may, however, deliver compounded products dispensed pursuant to valid prescriptions to alternate delivery locations pursuant to § 54.1-3420.2.
A pharmacist may also provide compounded products to practitioners of medicine, osteopathy, podiatry, dentistry, or veterinary medicine to administer to their patients in the course of their professional practice, either personally or under their direct and immediate supervision.
Pharmacists shall label all compounded products distributed to practitioners for administration to their patients with (i) the statement "For Administering in Prescriber Practice Location Only"; (ii) the name and strength of the compounded medication or list of the active ingredients and strengths; (iii) the facility's control number; (iv) an appropriate beyond-use date as determined by the pharmacist in compliance with USP-NF standards for pharmacy compounding; and (v) quantity.
D. Pharmacists shall personally perform or personally supervise the compounding process, which shall include a final check for accuracy and conformity to the formula of the product being prepared, correct ingredients and calculations, accurate and precise measurements, appropriate conditions and procedures, and appearance of the final product.
E. Pharmacists shall ensure compliance with USP-NF standards for both sterile and non-sterile compounding.

F. Pharmacists may use bulk drug substances in compounding when such bulk drug substances:
1. Comply with the standards of an applicable United States Pharmacopoeia or National Formulary monograph, if such monograph exists, and the United States Pharmacopoeia chapter on pharmacy compounding; or are drug substances that are components of drugs approved by the FDA for use in the United States; or are otherwise approved by the FDA;
2. Are manufactured by an establishment that is registered by the FDA; or
3. Are distributed by a licensed wholesale distributor or registered nonresident wholesale distributor, or are distributed by a supplier otherwise approved by the FDA to distribute bulk drug substances if the pharmacist can establish purity and safety by reasonable means, such as lot analysis, manufacturer reputation, or reliability of the source.
G. Pharmacists may compound using ingredients that are not considered drug products in accordance with the USP-NF standards and guidance on pharmacy compounding.
H. Pharmacists shall not engage in the following:
1. The compounding for human use of a drug product that has been withdrawn or removed from the market by the FDA because such drug product or a component of such drug product has been found to be unsafe. However, this prohibition shall be limited to the scope of the FDA withdrawal; or
2. The regular compounding or the compounding of inordinate amounts of any drug products that are essentially copies of commercially available drug products. However, this prohibition shall not include (i) the compounding of any commercially available product when there is a change in the product ordered by the prescriber for an individual patient, (ii) the compounding of a commercially manufactured drug only during times when the product is not available from the manufacturer or supplier, or (iii) the mixing of two or more commercially available products regardless of whether the end product is a commercially available product.
I. Pharmacists shall maintain records of all compounded drug products as part of the prescription, formula record, formula book, or other log or record. Records may be maintained electronically, manually, in a combination of both, or by any other readily retrievable method.
1. In addition to other requirements for prescription records, records for products compounded pursuant to a prescription order for a single patient where only manufacturers' finished products are used as components shall include the name and quantity of all components, the date of compounding and dispensing, the prescription number or other identifier of the prescription order, the total quantity of finished product, the signature or initials of the pharmacist or pharmacy technician performing the compounding, and the signature or initials of the pharmacist responsible for supervising the pharmacy technician and verifying the accuracy and integrity of compounded products.
2. In addition to the requirements of subdivision I 1, records for products compounded in bulk or batch in advance of dispensing or when bulk drug substances are used shall include: the generic name and the name of the manufacturer of each component or the brand name of each component; the manufacturer's lot number and expiration date for each component or when the original manufacturer's lot number and expiration date are unknown, the source of acquisition of the component; the assigned lot number if subdivided, the unit or package size and the number of units or packages prepared; and the beyond-use date. The criteria for establishing the beyond-use date shall be available for inspection by the Board.
3. A complete compounding formula listing all procedures, necessary equipment, necessary environmental considerations, and other factors in detail shall be maintained where such instructions are necessary to replicate a compounded product or where the compounding is difficult or complex and must be done by a certain process in order to ensure the integrity of the finished product.
4. A formal written quality assurance plan shall be maintained that describes specific monitoring and evaluation of compounding activities in accordance with USP-NF standards. Records shall be maintained showing compliance with monitoring and evaluation requirements of the plan to include training and initial and periodic competence assessment of personnel involved in compounding, monitoring of environmental controls and equipment calibration, and any end-product testing, if applicable.
J. Practitioners who may lawfully compound drugs for administering or dispensing to their own patients pursuant to §§ 54.1-3301, 54.1-3304 and 54.1-3304.1 shall comply with all provisions of this section and the relevant Board regulations. (2003, c. 509; 2005, c. 200.)

§ 54.1-3411. When prescriptions may be refilled.

Prescriptions may be refilled as follows:
1. A prescription for a drug in Schedule II may not be refilled.

2. A prescription for a drug in Schedules III or IV may not be filled or refilled more than six months after the date on which such prescription was issued and no such prescription may be authorized to be refilled, nor be refilled, more than five times, except that any prescription for such a drug after six months from the date of issue, or after being refilled five times, may be renewed by the prescriber issuing it either in writing, or orally, if promptly reduced to writing and filed by the pharmacist filling it.
3. A prescription in Schedule VI may not be refilled, unless authorized by the prescriber either on the face of the original prescription or orally by the prescriber except as provided in subdivision 4 of this section. Oral instructions shall be reduced promptly to writing by the pharmacist and filed on or with the original prescription.
4. A prescription for a drug controlled by Schedule VI may be refilled without authorization from the prescriber if reasonable effort has been made to communicate with the prescriber, and the pharmacist has determined that he is not available and the patient's health would be in imminent danger without the benefits of the drug. The pharmacist shall inform the patient of the prescriber's unavailability and that the refill is being made without his authorization. The pharmacist shall promptly inform the prescriber of such refill. The date and quantity of the refill, the prescriber's unavailability and the rationale for the refill shall be noted on the reverse side of the prescription.
(1970, c. 650, § 54-524.68; 1972, c. 798; 1976, c. 614; 1983, c. 395; 1988, c. 765; 1996, c. 408.)

§ 54.1-3414. Official orders for Schedule II drugs.

An official written order for any Schedule II drug shall be signed by the purchasing licensee or by his agent. The original shall be presented to the person who supplies the drug or drugs. If such person accepts the order, each party to the transaction shall preserve his copy of the order for two years in such a way as to be readily accessible for inspection by any public officer or employee engaged in the enforcement of this chapter. It shall be deemed a compliance with this section if the parties to the transaction have complied with the federal laws respecting the requirements governing the use of order forms. Parties ordering Schedule II drugs electronically shall comply with all requirements of federal law and regulation governing such transactions.
(Code 1950, § 54-493; 1970, c. 650, § 54-524.60; 1988, c. 765; 2006, c. 346.)

§ 54.1-3415. Distribution of drugs in Schedules II through VI by manufacturers and wholesalers.

A. A permitted manufacturer or wholesaler may distribute Schedule II drugs to any of the following persons, but only on official written orders or pursuant to an electronic order in compliance with federal laws and regulations governing the electronic ordering of Schedule II drugs:
1. To a manufacturer or wholesaler who has been issued permits pursuant to this chapter;
2. To a licensed pharmacist, permitted pharmacy or a licensed practitioner of medicine, osteopathy, podiatry, dentistry or veterinary medicine;
3. To a person who has been issued a controlled substance registration certificate pursuant to § 54.1-3422, if the certificate of such person authorizes such purchase;
4. On a special written order accompanied by a certificate of exemption, as required by the federal laws, to a person in the employ of the United States government or of any state, territorial, district, county, municipal, or insular government, purchasing, receiving or possessing drugs by reason of his official duties;
5. To a master of a ship or a person in charge of any aircraft upon which no physician is regularly employed, for the actual medical needs of persons on board such ship or aircraft when not in port. However, such drugs shall be sold to a master of such ship or person in charge of such aircraft pursuant to a special order form approved by a commissioned medical officer or acting assistant surgeon of the United States Public Health Service; and
6. To a person in a foreign country in compliance with the provisions of the relevant federal laws.
B. A permitted manufacturer or wholesaler may distribute drugs classified in Schedule III through Schedule VI and devices to all persons listed in subsection A of this section without an official written order. However, this section shall not be construed to prohibit the distribution of a Schedule VI drug or device to any person who is otherwise authorized by law to administer, prescribe or dispense such drug or device.
(Code 1950, § 54-492; 1970, c. 650; 1972, c. 798, § 54-524.59; 1977, c. 302; 1978, c. 833; 1988, c. 765; 1998, c. 490; 2006, c. 346.)

§ 54.1-3417. Disposing of stocks of Schedules II through V drugs.

The owner of any stocks of drugs included in Schedules II through V obtained in compliance with this chapter, upon discontinuance of dealing in such drugs, may dispose of such stocks only on an official written order as follows:
1. A pharmacy or practitioner or an agent or agents of a pharmacy or practitioner under specific written authorization from the owner of such pharmacy or such practitioner, may dispose of such stocks to a manufacturer or wholesaler holding a valid license to deal in such drugs, or to another pharmacy or practitioner.
2. A manufacturer or wholesaler may dispose of such stocks only to a manufacturer or wholesaler holding a valid permit to deal in such drugs.
(1970, c. 650, § 54-524.61; 1976, c. 406; 1988, c. 765.)

§ 54.1-3421. New drugs.

A. No person shall sell, deliver, offer for sale, hold for sale or give away any new drug unless an application with respect to the drug has been approved and the approval has not been withdrawn under § 505 of the federal Food, Drug, and Cosmetic Act (21 U.S.C. § 355).
B. This section shall not apply to a drug subject to the federal act intended solely for investigational use and for which a notice of claimed investigational exemption for a new drug has been filed with the U.S. Food and Drug Administration in accordance with 21 C.F.R. Part 312.
(1970, c. 650, § 54-524.95; 1988, c. 765; 2000, c. 135.)

§ 54.1-3422. Controlled substances registration certificate required in addition to other requirements; exemptions.

A. Every person who manufactures, distributes or dispenses any substance that is controlled in Schedules I through V or who proposes to engage in the manufacture, distribution or dispensing of any such controlled substance except permitted pharmacies, those persons who are licensed pharmacists, those persons who are licensed physician assistants, and those persons who are licensed practitioners of medicine, osteopathy, podiatry, dentistry, optometry, nursing, or veterinary medicine shall obtain annually a controlled substances registration certificate issued by the Board. This registration shall be in addition to other licensing or permitting requirements enumerated in this chapter or otherwise required by law.
B. Registration under this section and under all other applicable registration requirements shall entitle the registrant to possess, manufacture, distribute, dispense, or conduct research with those substances to the extent authorized by this registration and in conformity with the other provisions of this chapter.
C. The following persons need not register and may possess controlled substances listed on Schedules I through VI:
1. An agent or employee of any holder of a controlled substance registration certificate or of any practitioner listed in subsection A of this section as exempt from the requirement for registration, if such agent or employee is acting in the usual course of his business or employment;
2. A common or contract carrier or warehouseman, or his employee, whose possession is in the usual course of business or employment; or
3. An ultimate user or a person in possession of any controlled substance pursuant to a lawful order of a prescriber or in lawful possession of a Schedule V substance.
D. A separate registration is required at each principal place of business or professional practice where the applicant manufactures, distributes, or dispenses controlled substances.
(1972, c. 798, § 54-524.47:2; 1988, c. 765; 1996, cc. 408, 468, 496; 1998, c. 490; 2001, cc. 243, 465.)

§ 54.1-3423. Board to issue registration unless inconsistent with public interest; authorization to conduct research; application and fees.

A. The Board shall register an applicant to manufacture or distribute controlled substances included in Schedules I through V unless it determines that the issuance of that registration would be inconsistent with the public interest. In determining the public interest, the Board shall consider the following factors:
1. Maintenance of effective controls against diversion of controlled substances into other than legitimate medical, scientific, or industrial channels;
2. Compliance with applicable state and local law;
3. Any convictions of the applicant under any federal and state laws relating to any controlled substance;

4. Past experience in the manufacture or distribution of controlled substances, and the existence in the applicant's establishment of effective controls against diversion;
5. Furnishing by the applicant of false or fraudulent material in any application filed under this chapter;
6. Suspension or revocation of the applicant's federal registration to manufacture, distribute, or dispense controlled substances as authorized by federal law; and
7. Any other factors relevant to and consistent with the public health and safety.
B. Registration under subsection A does not entitle a registrant to manufacture and distribute controlled substances in Schedule I or II other than those specified in the registration.
C. Practitioners must be registered to conduct research with controlled substances in Schedules II through VI. Practitioners registered under federal law to conduct research with Schedule I substances may conduct research with Schedule I substances within this Commonwealth upon furnishing the evidence of that federal registration.
D. The Board may register other persons or entities to possess controlled substances listed on Schedules II through VI upon a determination that (i) there is a documented need, (ii) the issuance of the registration is consistent with the public interest, (iii) the possession and subsequent use of the controlled substances complies with applicable state and federal laws and regulations, and (iv) the subsequent storage, use, and recordkeeping of the controlled substances will be under the general supervision of a licensed pharmacist, practitioner of medicine, osteopathy, podiatry, dentistry or veterinary medicine as specified in the Board's regulations. The Board shall consider, at a minimum, the factors listed in subsection A of this section in determining whether the registration shall be issued. Notwithstanding the exceptions listed in § 54.1-3422 A, the Board may mandate a controlled substances registration for sites maintaining certain types and quantities of Schedules II through VI controlled substances as it may specify in its regulations. The Board shall promulgate regulations related to requirements or criteria for the issuance of such controlled substances registration, storage, security, supervision, and recordkeeping. The first such regulations shall be promulgated within 280 days of the enactment of this provision.
E. Applications for controlled substances registration certificates and renewals thereof shall be made on a form prescribed by the Board and such applications shall be accompanied by a fee in an amount to be determined by the Board.
F. Upon (i) any change in ownership or control of a business, (ii) any change of location of the controlled substances stock, (iii) the termination of authority by or of the person named as the responsible party on a controlled substances registration, or (iv) a change in the supervising practitioner, if applicable, the registrant or responsible party shall immediately surrender the registration. The registrant shall, within fourteen days following surrender of a registration, file a new application and, if applicable, name the new responsible party or supervising practitioner.
(1972, c. 798, § 54-524.47:3; 1978, c. 833; 1980, c. 288; 1988, c. 765; 1996, cc. 468, 496; 1998, c. 490.)

§ 54.1-3424. Suspension or revocation of registration, license or permit; limitation to particular controlled substance; controlled substances placed under seal; sale of perishables and forfeiture; notification to DEA.

A. A registration to manufacture, distribute, or dispense a controlled substance may be suspended or revoked by the Board upon a finding that the registrant:
1. Has furnished false or fraudulent material information in an application filed under this chapter;
2. Has been convicted of a felony under any state or federal law relating to any controlled substance;
3. Has had his federal registration to manufacture, distribute or dispense controlled substances suspended or revoked;
4. Has violated or cooperated with others in violating any provision of this chapter or regulations of the Board relating to the manufacture, distribution or dispensing of controlled substances.
B. The Board may limit revocation or suspension of a registration to the particular controlled substance with respect to which grounds for revocation or suspension exist.
C. If the Board suspends or revokes a registration, or if the license or permit of a person possessing controlled substances under an exemption in § 54.1-3422 A is suspended or revoked by the issuing board, all controlled substances owned or possessed by the registrant, licensee or permittee at the time of suspension or the effective date of the revocation order may be placed under seal. No disposition may be made of substances under seal until the time for taking an appeal has elapsed or until all appeals have been concluded unless a court orders the sale of perishable substances and the deposit of the proceeds of the sale with the court. Upon a revocation order becoming final, all controlled substances shall be forfeited to the Commonwealth.
D. The Board shall promptly notify the DEA of all orders suspending or revoking registration and all forfeitures of controlled substances.
(1972, c. 798, § 54-524.47:4; 1988, c. 765; 1996, cc. 468, 496; 1998, c. 490.)

§ 54.1-3426. Regulations for special packaging.

A. The Board shall adopt standards for special packaging consistent with those promulgated pursuant to the federal Poison Prevention Packaging Act of 1970 (15 U.S.C. § 1471 et seq.). The Board may exempt any drug from the requirements of special packaging and shall exempt any drug exempted pursuant to the Poison Prevention Packaging Act of 1970.
B. A prescriber or a purchaser may direct that a drug, which is subject to being dispensed in special packaging, be dispensed in other than special packaging.
(1978, c. 833, § 54-524.67:1; 1988, c. 765; 1996, c. 408.)

§ 54.1-3427. Dispensing drugs without safety closure container.

When a pharmacist receives the request of any person that a drug or drugs for such person to be dispensed by the pharmacist not be placed in a safety closure container, the pharmacist may dispense such drug or drugs in such nonsafety closure container. The delivering pharmacist shall not be civilly liable simply by reason of dispensing a drug or drugs in such a container if the recipient signs a release covering a period of time or a single delivery, which release provides that the recipient releases the pharmacist from civil liability for not using the safety closure container, unless the pharmacist acted with willful and wanton disregard of safety.
(1978, c. 839, § 54-524.67:2; 1988, c. 765.)

§ 54.1-3443. Board to administer article.

A. The Board shall administer this article and may add substances to or deschedule or reschedule all substances enumerated in the schedules in this article pursuant to the procedures of the Administrative Process Act (§ 2.2-4000 et seq.). In making a determination regarding a substance, the Board shall consider the following:
1. The actual or relative potential for abuse;
2. The scientific evidence of its pharmacological effect, if known;
3. The state of current scientific knowledge regarding the substance;
4. The history and current pattern of abuse;
5. The scope, duration, and significance of abuse;
6. The risk to the public health;
7. The potential of the substance to produce psychic or physical dependence; and
8. Whether the substance is an immediate precursor of a substance already controlled under this article.
B. After considering the factors enumerated in subsection A, the Board shall make findings and issue a regulation controlling the substance if it finds the substance has a potential for abuse.
C. If the Board designates a substance as an immediate precursor, substances which are precursors of the controlled precursor shall not be subject to control solely because they are precursors of the controlled precursor.
D. If any substance is designated, rescheduled, or descheduled as a controlled substance under federal law and notice of such action is given to the Board, the Board may similarly control the substance under this chapter after the expiration of 120 days from publication in the Federal Register of the final order designating a substance as a controlled substance or rescheduling or descheduling a substance without following the provisions specified in subsections A and B of this section.
E. Authority to control under this section does not extend to distilled spirits, wine, malt beverages, or tobacco as those terms are defined or used in Title 4.1.
F. The Board shall exempt any nonnarcotic substance from a schedule if such substance may, under the provisions of the federal Food, Drug and Cosmetic Act (21 U.S.C. § 301 et seq.) or state law, be lawfully sold over the counter without a prescription.
(1972, c. 798, § 54-524.84:1; 1976, c. 614; 1988, c. 765; 1993, c. 866; 1996, c. 408.)

§ 54.1-3444. Controlled substances included by whatever name designated.

The controlled substances listed or to be listed in the schedules in this chapter are included by whatever official, common, usual, chemical, or trade name designated.
(1972, c. 798, § 54-524.84:2; 1988, c. 765.)

§ 54.1-3445. Placement of substance in Schedule I.

The Board shall place a substance in Schedule I if it finds that the substance:
1. Has high potential for abuse; and
2. Has no accepted medical use in treatment in the United States or lacks accepted safety for use in treatment under medical supervision.
(1972, c. 798, § 54-524.84:3; 1988, c. 765.)

§ 54.1-3446. Schedule I.

The controlled substances listed in this section are included in Schedule I:
1. Any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, unless specifically excepted, whenever the existence of these isomers, esters, ethers and salts is possible within the specific chemical designation:
Acetylmethadol;
Allylprodine;
Alphacetylmethadol (except levo-alphacetylmethadol, also known as levo-alpha-acetylmethadol, levomethadyl acetate, or LAAM);
Alphameprodine;
Alphamethadol;
Benzethidine;
Betacetylmethadol;
Betameprodine;
Betamethadol;
Betaprodine;
Clonitazene;
Dextromoramide;
Diampromide;
Diethylthiambutene;
Difenoxin;
Dimenoxadol;
Dimepheptanol;
Dimethylthiambutene;
Dioxaphetylbutyrate;
Dipipanone;
Ethylmethylthiambutene;
Etonitazene;
Etoxeridine;
Furethidine;
Hydroxypethidine;
Ketobemidone;
Levomoramide;
Levophenacylmorphan;
Morpheridine;
Noracymethadol;
Norlevorphanol;
Normethadone;
Norpipanone;
Phenadoxone;
Phenampromide;
Phenomorphan;
Phenoperidine;
Piritramide;
Proheptazine;

Properidine;
Propiram;
Racemoramide;
Tilidine;
Trimeperidine.
2. Any of the following opium derivatives, their salts, isomers and salts of isomers, unless specifically excepted, whenever the existence of these salts, isomers and salts of isomers is possible within the specific chemical designation:
Acetorphine;
Acetyldihydrocodeine;
Benzylmorphine;
Codeine methylbromide;
Codeine-N-Oxide;
Cyprenorphine;
Desomorphine;
Dihydromorphine;
Drotebanol;
Etorphine;
Heroin;
Hydromorphinol;
Methyldesorphine;
Methyldihydromorphine;
Morphine methylbromide;
Morphine methylsulfonate;
Morphine-N-Oxide;
Myrophine;
Nicocodeine;
Nicomorphine;
Normorphine;
Pholcodine;
Thebacon.
3. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation, which contains any quantity of the following hallucinogenic substances, or which contains any of its salts, isomers, and salts of isomers, whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation (for purposes of this subdivision only, the term "isomer" includes the optical, position, and geometric isomers):
Alpha-ethyltryptamine (some trade or other names: Monase;a-ethyl-1H-indole-3-ethanamine; 3-]2-aminobutyl] indole; a-ET; AET);
4-Bromo-2,5-dimethoxyphenethylamine (some trade or other names: 2-[4-bromo-2,5-dimethoxyphenyl]-1-aminoethane;alpha-desmethyl DOB;2C-B; Nexus);
3,4-methylenedioxy amphetamine;
5-methoxy-3,4-methylenedioxy amphetamine;
3,4,5-trimethoxy amphetamine;
Alpha-methyltryptamine (other name: AMT);
Bufotenine;
Diethyltryptamine;
Dimethyltryptamine;
4-methyl-2,5-dimethoxyamphetamine;
2,5-dimethoxy-4-ethylamphetamine (DOET);
2,5-dimethoxy-4-(n)-propylthiophenethylamine (other name: 2C-T-7);
Ibogaine;
5-methoxy-N,N-diisopropyltryptamine (other name: 5-MeO-DIPT);
Lysergic acid diethylamide;
Mescaline;

Parahexyl (some trade or other names: 3-Hexyl-1-hydroxy-7, 8, 9, 10-tetrahydro-6, 6, 9-trimethyl-6H-dibenzo [b,d] pyran; Synhexyl);
Peyote;
N-ethyl-3-piperidyl benzilate;
N-methyl-3-piperidyl benzilate;
Psilocybin;
Psilocyn;
Tetrahydrocannabinols, except as present in marijuana and dronabinol in sesame oil and encapsulated in a soft gelatin capsule in a drug product approved by the U.S. Food and Drug Administration;
Hashish oil (some trade or other names: hash oil; liquid marijuana; liquid hashish);
2,5-dimethoxyamphetamine (some trade or other names: 2,5-dimethoxy-a-methylphenethylamine; 2,5-DMA);
3,4-methylenedioxymethamphetamine (MDMA), its optical, positional and geometric isomers, salts and salts of isomers;
3,4-methylenedioxy-N-ethylamphetamine (also known as N-ethyl-alpha-methyl-3,4 (methylenedioxy)phenethylamine, N-ethyl MDA, MDE, MDEA);
N-hydroxy-3,4-methylenedioxyamphetamine (some other names: N-hydroxy-alpha-methyl-3,4(methylenedioxy)phenethylamine, and N-hydroxy MDA);
4-bromo-2,5-dimethoxyamphetamine (some trade or other names: 4-bromo-2,5-dimethoxy-a-methylphenethylamine; 4-bromo-2,5-DMA);
4-methoxyamphetamine (some trade or other names: 4-methoxy-a-methylphenethylamine; paramethoxyamphetamine; PMA);
Ethylamine analog of phencyclidine (some other names: N-ethyl-1-phenylcyclohexylamine, (1-phenylcyclohexyl) ethylamine, N-(1-phenylcyclohexyl) ethylamine, cyclohexamine, PCE);
Pyrrolidine analog of phencyclidine (some other names: 1-(1-phenylcyclohexyl) -pyrrolidine, PCPy, PHP);
Thiophene analog of phencyclidine (some other names: 1-[1-(2-thienyl) -cyclohexyl]-piperidine, 2-thienyl analog of phencyclidine, TPCP, TCP);
1-[1-(2-thienyl)cyclohexyl]pyrrolidine (other name: TCPy).
4. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system, including its salts, isomers and salts of isomers whenever the existence of such salts, isomers and salts of isomers is possible within the specific chemical designation:
Gamma hydroxybutyric acid (some other names include GHB; gamma hydroxybutyrate; 4-hydroxybutyrate; 4-hydroxybutanoic acid; sodium oxybate; sodium oxybutyrate);
Mecloqualone;
Methaqualone.
5. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers and salts of isomers:
Aminorex (some trade or other names; aminoxaphen; 2-amino-5-phenyl-2-oxazoline; 4, 5-dihydro-5-phenyl-2-oxazolamine);
N-Benzylpiperazine (some other names: BZP, 1-benzylpiperazine);
Fenethylline;
Ethylamphetamine;
Cathinone (some trade or other names: 2-amino-1-phenyl-1-propanone, alpha-aminopropiophenone, 2-aminopropiophenone, norephedrone), and any plant material from which Cathinone may be derived;
Methcathinone (some other names: 2-(methylamino)-propiophenone; alpha-(methylamino) propiophenone; 2-(methylamino)-1-phenylpropan-1-one; alpha-N-methylaminopropiophenone; monomethylpropion; ephedrone; N-methylcathinone; methylcathinone; AL-464; AL-422; AL-463 and UR 1432);
Cis-4-methylaminorex (other name: cis-4,5-dihydro-4-methyl-5-phenyl-2-oxazolamine);
N,N-dimethylamphetamine (other names: N,N-alpha-trimethyl-benzeneethanamine, N,N-alpha-trimethylphenethylamine).
6. Any material, compound, mixture or preparation containing any quantity of the following substances:
N-[3-methyl-1-(2-phenethyl)-4-piperidyl]-N-phenylpropanamide (other name: 3-methylfentanyl), its optical and geometric isomers, salts, and salts of isomers;
1-methyl-4-phenyl-4-propionoxypiperidine (other name: MPPP), its optical isomers, salts and salts of isomers;
1-(2-phenylethyl)-4-phenyl-4-acetyloxypiperidine (other name: PEPAP), its optical isomers, salts and salts of isomers;

N-]1-(alpha-methyl-beta-phenyl) ethyl-4-piperidyl] propionanilide (other names: 1-(1-methyl-2-phenylethyl)-4-(N-propanilido) piperidine), alpha-methylfentanyl);
N-[1-(1-methyl-2-phenethyl)-4-piperidyl]-N-phenylacetamide (other name: acetyl-alpha-methylfentanyl), its optical isomers, salts and salts of isomers;
N-[1-(1-methyl-2-2-thienyl)ethyl-4 piperidyl]-N-phenylpropanamide (other name: alpha-methylthiofentanyl), its optical isomers, salts and salts of isomers;
N-[1-benzyl-4-piperidyl]N-phenylpropanamide (other name: benzylfentanyl), its optical isomers, salts and salts of isomers;
N-[1-(2-hydroxy-2-phenyl) ethyl-4-piperidyl]-N-phenylpropanamide (other name: beta-hydroxyfentanyl), its optical isomers, salts and salts of isomers;
N-[3-methyl-1-(2-hydroxy-2-phenethyl)-4-piperidyl]-N-phenylprop anamide (other name: beta-hydroxy-3-methylfentanyl), its optical and geometric isomers, salts and salts of isomers;
N-[(3-methyl-1-(2-thienyl)ethyl-4-piperidinyl[-N-phenylpropanam ide (other name: 3-methylthiofentanyl), its optical and geometric isomers, salts and salts of isomers;
N-[1-(2-thienyl)methyl-4-piperidyl]-N-phenylpropanamide (other name: thenylfentanyl), its optical isomers, salts and salts of isomers;
N-phenyl-N-[1-(2-thienyl)ethyl-4-piperidinyl]-propanamide (other name: thiofentanyl), its optical isomers, salts and salts of isomers;
N-(4-fluorophenyl)-N-[1-(2-phenethyl)-4-piperidinyl] propanamide (other name: para-fluorofentanyl), its optical isomers, salts and salts of isomers.
(1972, c. 798, § 54-524.84:4; 1973, c. 479; 1976, c. 614; 1977, c. 302; 1979, cc. 387, 435; 1982, c. 505; 1984, cc. 186, 192; 1986, c. 463; 1988, c. 765; 1994, c. 763; 1996, c. 408; 1997, c. 594; 1999, c. 722; 2000, c. 348; 2005, c. 119.)

§ 54.1-3447. Placement of substance in Schedule II.

The Board shall place a substance in Schedule II if it finds that:
1. The substance has high potential for abuse;
2. The substance has currently accepted medical use in treatment in the United States, or currently accepted medical use with severe restrictions; and
3. The abuse of the substance may lead to severe psychic or physical dependence.
(1972, c. 798, § 54-524.84:5; 1988, c. 765.)

§ 54.1-3448. Schedule II.

The controlled substances listed in this section are included in Schedule II:
1. Any of the following substances, except those narcotic drugs listed in other schedules, whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by combination of extraction and chemical synthesis:
Opium and opiate, and any salt, compound, derivative, or preparation of opium or opiate, excluding apomorphine, thebaine-derived butorphanol, dextrorphan, nalbuphine, nalmefene, naloxone naltrexone and their respective salts, but including the following:
Raw opium;
Opium extracts;
Opium fluid extracts;
Powdered opium;
Granulated opium;
Tincture of opium;
Codeine;
Dihydroetorphine;
Ethylmorphine;
Etorphine hydrochloride;
Hydrocodone;
Hydromorphone;

Metopon;
Morphine;
Oxycodone;
Oxymorphone;
Thebaine.
Any salt, compound, isomer, derivative, or preparation thereof which is chemically equivalent or identical with any of the substances referred to in this subdivision, but not including the isoquinoline alkaloids of opium.
Opium poppy and poppy straw.
Coca leaves and any salt, compound, derivative, or preparation of coca leaves, and any salt, compound, derivative, or preparation thereof which is chemically equivalent or identical with any of these substances, but not including decocainized coca leaves or extractions which do not contain cocaine or ecgonine; cocaine or any salt or isomer thereof.
Concentrate of poppy straw, the crude extract of poppy straw in either liquid, solid or powder form, which contains the phenanthrene alkaloids of the opium poppy.
2. Any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, whenever the existence of these isomers, esters, ethers and salts is possible within the specific chemical designation:
Alfentanil;
Alphaprodine;
Anileridine;
Bezitramide;
Bulk dextropropoxyphene (nondosage forms);
Carfentanil;
Dihydrocodeine;
Diphenoxylate;
Fentanyl;
Isomethadone;
Levo-alphacetylmethadol (levo-alpha-acetylmethadol)
(levomethadyl acetate) (LAAM);
Levomethorphan;
Levorphanol;
Metazocine;
Methadone;
Methadone - Intermediate, 4-cyano-2-dimethylamino-4, 4-diphenyl butane;
Moramide - Intermediate, 2-methyl-3-morpholino-1, 1-diphenyl-propane-carboxylicacid;
Pethidine (other name: meperidine);
Pethidine - Intermediate - A, 4-cyano-1-methyl-4-phenylpiperidine;
Pethidine - Intermediate - B, ethyl-4-phenylpiperidine-4-carboxylate;
Pethidine - Intermediate - C, 1-methyl-4-phenylpiperidine-4-carboxylic acid;
Phenazocine;
Piminodine;
Racemethorphan;
Racemorphan;
Remifentanil;
Sufentanil.
3. Any material, compound, mixture or preparation which contains any quantity of the following substances having a potential for abuse associated with a stimulant effect on the central nervous system:
Amphetamine, its salts, optical isomers, and salts of its optical isomers;
Phenmetrazine and its salts;
Any substance which contains any quantity of methamphetamine, including its salts, isomers, and salts of isomers;
Methylphenidate.
4. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system, including its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:
Amobarbital;

Glutethimide;
Secobarbital;
Pentobarbital;
Phencyclidine.
5. The following hallucinogenic substance:
Nabilone.
6. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances which are immediate precursors to amphetamine and methamphetamine or phencyclidine:
Phenylacetone;
1-phenylcyclohexylamine;
1-piperidinocyclohexanecarbonitrile (other name: PCC).
(1972, c. 798, § 54-524.84:6; 1976, c. 614; 1977, c. 302; 1978, c. 833; 1979, c. 387; 1981, c. 30; 1984, c. 192; 1986, c. 463; 1988, cc. 283, 765; 1992, c. 737; 1994, c. 763; 1998, c. 105; 2000, c. 135; 2005, c. 119.)

§ 54.1-3449. Placement of substance in Schedule III.

The Board shall place a substance in Schedule III if it finds that:
1. The substance has a potential for abuse less than the substances listed in Schedules I and II;
2. The substance has currently accepted medical use in treatment in the United States; and
3. Abuse of the substance may lead to moderate or low physical dependence or high psychological dependence.
(1972, c. 798, § 54-524.84:7; 1988, c. 765.)

§ 54.1-3450. Schedule III.

The controlled substances listed in this section are included in Schedule III:
1. Unless specifically exempted or listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system:
Any substance which contains any quantity of a derivative of barbituric acid, or any salt of a derivative of barbituric acid, except those substances which are specifically listed in other schedules;
Any compound, mixture or preparation containing amobarbital, secobarbital, or pentobarbital or any salt of amobarbital, secobarbital, or pentobarbital and one or more other active medicinal ingredients which are not listed in Schedules II through V;
Any suppository dosage form containing amobarbital, secobarbital, or pentobarbital or any salt of amobarbital, secobarbital, or pentobarbital and approved by the Food and Drug Administration for marketing only as a suppository;
Chlorhexadol;
Any drug product containing gamma hydroxybutyric acid, including its salts, isomers, and salts of isomers, for which an application is approved under section 505 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. § 355);
Ketamine, its salts, isomers, and salts of isomers (some other names:]+-] -2-]2-chlorophenyl]-2-]methylamino]-cyclohexanone);
Lysergic acid;
Lysergic acid amide;
Methyprylon;
Sulfondiethylmethane;
Sulfonethylmethane;
Sulfonmethane; and
Tiletamine - zolazepam combination product or any salt thereof.
2. Nalorphine.
3. Unless specifically excepted or unless listed in another schedule:
a. Any material, compound, mixture, or preparation containing any of the following narcotic drugs or their salts thereof:
Buprenorphine.
b. Any material, compound, mixture, or preparation containing limited quantities of any of the following narcotic drugs, or any salts thereof:

Not more than 1.8 grams of codeine, or any of its salts, per 100 milliliters or not more than 90 milligrams per dosage unit, with an equal or greater quantity of an isoquinoline alkaloid of opium;
Not more than 1.8 grams of codeine, or any of its salts, per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;
Not more than 300 milligrams of dihydrocodeinone (hydrocodone), or any of its salts, per 100 milliliters or not more than 15 milligrams per dosage unit, with a fourfold or greater quantity of an isoquinoline alkaloid of opium;
Not more than 300 milligrams of dihydrocodeinone (hydrocodone), or any of its salts, per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;
Not more than 1.8 grams of dihydrocodeine, or any of its salts, per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;
Not more than 300 milligrams of ethylmorphine, or any of its salts, per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more ingredients in recognized therapeutic amounts;
Not more than 500 milligrams of opium per 100 milliliters or per 100 grams, or not more than 25 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;
Not more than 50 milligrams of morphine, or any of its salts, per 100 milliliters or per 100 grams with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.
4. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers (whether optical, position, or geometric), and salts of such isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:
Benzphetamine;
Chlorphentermine;
Clortermine;
Phendimetrazine.
5. The Board may except by regulation any compound, mixture, or preparation containing any stimulation or depressant substance listed in subsection A from the application of all or any part of this chapter if the compound, mixture, or preparation contains one or more active medicinal ingredients not having a stimulant or depressant effect on the central nervous system, and if the admixtures are included therein in combinations, quantity, proportion, or concentration that vitiate the potential for abuse of the substances which have a stimulant or depressant effect on the central nervous system.
6. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation containing any quantity of the following substances, including its salts, isomers, and salts of isomers whenever the existence of such salts of isomers is possible within the specific chemical designation:
Anabolic steroids, including, but not limited to:
3beta,17-dihydroxy-5a-androstane;
3alpha,17beta-dihydroxy-5a-androstane;
5alpha-androstan-3,17-dione;
1-androstenediol (3beta,17beta-dihydroxy-5alpha-androst-1-ene);
1-androstenediol (3alpha,17beta-dihydroxy-5alpha-androst-1-ene);
4-androstenediol (3beta,17beta-dihydroxy-androst-4-ene);
5-androstenediol (3beta,17beta-dihydroxy-androst-5-ene);
1-androstenedione (]5alpha]-androst-1-en-3,17-dione);
4-androstenedione (androst-4-en-3,17-dione);
5-androstenedione (androst-5-en-3,17-dione);
Bolasterone (7alpha,17alpha-dimenthyl-17beta-hydroxyandrost-4-en-3-one);
Boldenone (Dehydrotestosterone) (17beta-hydroxyandrost-1,4,-diene-3-one);
Calusterone (7beta,17alpha-dimethyl-17beta-hydroxyandrost-4-en-3-one);
Clostebol (4-Chlorotestosterone) (Chlorotestosterone) (4-chloro-17beta-hydroxyandrost-4-en-3-one);
Dehydrochloromethyltestosterone (4-chloro-17beta-hydroxy-17alpha-methyl-androst-1,4-dien-3-one);
Delta1-dihydrotestosterone (1-testosterone) (17beta-hydroxy-5alpha-androst-1-en-3-one);
Dromostanolone (Drostanolone) (17beta-hydroxy-2alpha-methyl-5alpha-androstan-3-one);
Ethylestrenol (17alpha-ethyl-17beta-hydroxyestr-4-ene);
Fluoxymesterone (9-fluoro-17alpha-methyl-11beta,17beta-dihydroxyandrost-4-en-3-one);
Formyldienolone (Formebolone) (2-formyl-17alpha-methyl-11alpha,17beta-dihydroxyandrost-1,4-dien-3-one);
Furazabol (17alpha-methyl-17beta-hydroxyandrostano]2,3-c]-furazan);

13-beta-ethyl-17alpha-hydroxygon-4-en-3-one;
4-hydroxytestosterone (4,17beta-dihydroxy-androst-4-en-3-one);
4-hydroxy-19-nortestosterone (4,17beta-dihydroxy-estr-4-en-3-one);
Mestanolone (17alpha-methyl-17beta-hydroxy-5-androstan-3-one);
Mesterolone (1alpha-methyl-17beta-hydroxy-]5alpha]-androstan-3-one);
Methandriol (methylandrostenediol) (17alpha-methyl-3beta,17beta-dihydroxyandrost-5-ene);
Methandrostenolone (Methandienone) (Dehydromethyltestosterone) (17alpha-methyl-17beta-hydroxyandrost-1,4-dien-3-one);
Methenolone (1-methyl-17beta-hydroxy-5alpha-androst-1-en-3-one);
17alpha-methyl-3beta,17beta-dihydroxy-5a-androstane;
17alpha-methyl-3alpha,17beta-dihydroxy-5a-androstane;
17alpha-methyl-3beta,17beta-dihydroxyandrost-4-ene);
17alpha-methyl-4-hydroxynandrolone (17alpha-methyl-4-hydroxy-17beta-hydroxyestr-4-en-3-one);
Methyldienolone (17alpha-methyl-17beta-hydroxyestra-4,9(10)-dien-3-one);
Methyltrienolone (17alpha-methyl-17beta-hydroxyestra-4,9-11-trien-3-one);
17-Methyltestosterone (Methyltestosterone) (17alpha-methyl-17beta-hydroxyandrost-4-en-3-one);
Mibolerone (7alpha,17alpha-dimethyl-17beta-hydroxyestr-4-en-3-one);
17alpha-methyl-delta1-dihydrotestosterone (17bbeta-hydroxy-17alpha-methyl-5alpha-androst-1-en-3-one) (17-alpha-methyl-1-testosterone);
Nandrolone (19-Nortestosterone) (17beta-hydroxyestr-4-en-3-one);
19-nor-4-androstenediol (3beta,17beta-dihydroxyestr-4-ene);
19-nor-4-androstenediol (3alpha,17beta-dihydroxyestr-4-ene);
19-nor-5-androstenediol (3beta,17beta-dihydroxyestr-5-ene);
19-nor-5-androstenediol (3alpha,17beta-dihydroxyestr-5-ene);
19-nor-4-androstenedione (estr-4-en-3,17-dione);
19-nor-5-androstenedione (estr-5-en-3,17-dione);
Norbolethone (13beta,17alpha-diethyl-17beta-hydroxygon-4-en-3-one);
Norclostebol (4-chloro-17beta-hydroxyestr-4-en-3-one);
Norethandrolone (17alpha-ethyl-17beta-hydroxyestr-4-en-3-one);
Normethandrolone (17alpha-methyl-17beta-hydroxyestr-4-en-3-one);
Oxandrolone (17alpha-methyl-17beta-hydroxy-2-oxa-]5alpha]-androstan-3-one);
Oxymesterone (Oxymestrone) (17alpha-methyl-4,17beta-dihydroxyandrost-4-en-3-one);
Oxymetholone (Anasterone) (17alpha-methyl-2-hydroxymethylene-17beta-hydroxy-]5alpha]-androstan-3-one);
Stanolone (4-Dihydrotestosterone) (Dihydrotestosterone) (17beta-hydroxy-androstan-3-one);
Stanozolol (Androstanazole) (17alpha-methyl-17beta-hydroxy-]5alpha]-androst-2-eno]3,2-c]-pyrazole);
Stenbolone (17beta-hydroxy-2-methyl-]5alpha]-androst-1-en-3-one);
Testolactone (1-Dehydrotestololactone) (13-hydroxy-3-oxo-13,17-secoandrosta-1,4-dien-17-oic acid lactone);
Testosterone (17beta-hydroxandrost-4-en-3-one);
Tetrahydrogestrinone (13beta,17alpha-diethyl-17beta-hydroxygon-4,9,11-trien-3-one);
Trenbolone (Trienbolone) (Trienolone) (17beta-hydroxyestr-4,9,11-trien-3-one); and
Any salt, ester, or ether of a drug or substance described or listed in this paragraph. However, such term does not include an anabolic steroid which is expressly intended for administration through implants to cattle or other nonhuman species and which has been approved by the United States Secretary of Health and Human Services for such administration. If any person prescribes, dispenses, or distributes any such steroid for human use, such person shall be considered to have prescribed, dispensed, or distributed an anabolic steroid within the meaning of this subsection.
7. Dronabinol (synthetic) in sesame oil and encapsulated in a soft gelatin capsule in a drug product approved by the U.S. Food and Drug Administration.
(1972, c. 798, § 54-524.84:8; 1976, c. 614; 1977, c. 302; 1979, c. 387; 1982, c. 505; 1988, cc. 283, 765; 1992, c. 737; 2000, cc. 135, 348; 2003, c. 640; 2005, c. 119; 2006, c. 346.)

§ 54.1-3451. Placement of substance in Schedule IV.

The Board shall place a substance in Schedule IV if it finds that:

1. The substance has a low potential for abuse relative to substances in Schedule III;
2. The substance has currently accepted medical use in treatment in the United States; and
3. Abuse of the substance may lead to limited physical dependence or psychological dependence relative to the substances in Schedule III.
(1972, c. 798, § 54-524.84:9; 1988, c. 765.)

§ 54.1-3452. Schedule IV.

The controlled substances listed in this section are included in Schedule IV unless specifically excepted or listed in another schedule:
1. Any material, compound, mixture, or preparation which contains any quantity of the following substances having a potential for abuse associated with a depressant effect on the central nervous system:
Alprazolam;
Barbital;
Bromazepam;
Camazepam;
Chloral betaine;
Chloral hydrate;
Chlordiazepoxide;
Clobazam;
Clonazepam;
Clorazepate;
Clotiazepam;
Cloxazolam;
Delorazepam;
Diazepam;
Dichloralphenazone;
Estazolam;
Ethchlorvynol;
Ethinamate;
Ethyl loflazepate;
Fludiazepam;
Flunitrazepam;
Flurazepam;
Halazepam;
Haloxazolam;
Ketazolam;
Loprazolam;
Lorazepam;
Lormetazepam;
Mebutamate;
Medazepam;
Methohexital;
Meprobamate;
Methylphenobarbital;
Midazolam;
Nimetazapam;
Nitrazepam;
Nordiazepam;
Oxazepam;
Oxazolam;
Paraldehyde;
Petrichloral;
Phenobarbital;

Pinazepam;
Prazepam;
Quazepam;
Temazepam;
Tetrazepam;
Triazolam;
Zaleplon;
Zolpidem;
Zopiclone.
2. Any compound, mixture or preparation which contains any quantity of the following substances including any salts or isomers thereof:
Fenfluramine.
3. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers (whether optical, position, or geometric), and salts of such isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:
Cathine (+)-norpseudoephedrine;
Diethylpropion;
Fencamfamin;
Fenproprex;
Mazindol;
Mefenorex;
Modafinil;
Phentermine;
Pemoline (including organometallic complexes and chelates thereof);
Pipradrol;
Sibutramine;
SPA (-)-1-dimethylamino-1, 2-diphenylethane.
4. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation containing any of the following narcotic drugs, or their salts calculated as the free anhydrous base or alkaloid, in limited quantities as set forth below:
Dextropropoxyphene (alpha-(+)-4-dimethylamino-1, 2-diphenyl-3-methyl-2-propionoxy butane);
Not more than 1 milligram of difenoxin and not less than 25 micrograms of atropine sulfate per dosage unit.
5. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances, including their salts:
Butorphanol (including its optical isomers);
Pentazocine.
6. The Board may except by regulation any compound, mixture, or preparation containing any depressant substance listed in subdivision 1 from the application of all or any part of this chapter if the compound, mixture, or preparation contains one or more active medicinal ingredients not having a depressant effect on the central nervous system, and if the admixtures are included therein in combinations, quantity, proportion, or concentration that vitiate the potential for abuse of the substances which have a depressant effect on the central nervous system.
(1972, c. 798, § 54-524.84:10; 1976, c. 614; 1977, c. 302; 1978, c. 705; 1979, c. 387; 1982, c. 505; 1986, c. 463; 1988, cc. 283, 765; 1992, c. 737; 1994, c. 763; 1998, c. 105; 1999, c. 605; 2000, c. 135; 2003, c. 640; 2006, c. 346.)

§ 54.1-3453. Placement of substance in Schedule V.

The Board shall place a substance in Schedule V if it finds that:
1. The substance has low potential for abuse relative to the controlled substances listed in Schedule IV;
2. The substance has currently accepted medical use in treatment in the United States; and
3. The substance has limited physical dependence or psychological dependence liability relative to the controlled substances listed in Schedule IV.
(1972, c. 798, § 54-524.84:11; 1988, c. 765.)

§ 54.1-3454. Schedule V.

The controlled substances listed in this section are included in Schedule V:
1. Any compound, mixture, or preparation containing limited quantities of any of the following narcotic drugs, which also contains one or more nonnarcotic active medicinal ingredients in sufficient proportion to confer upon the compound, mixture, or preparation, valuable medicinal qualities other than those possessed by the narcotic drug alone:
Not more than 200 milligrams of codeine, or any of its salts, per 100 milliliters or per 100 grams;
Not more than 100 milligrams of dihydrocodeine, or any of its salts, per 100 milliliters or per 100 grams;
Not more than 100 milligrams of ethylmorphine, or any of its salts, per 100 milliliters or per 100 grams;
Not more than 2.5 milligrams of diphenoxylate and not less than 25 micrograms of atropine sulfate per dosage unit;
Not more than 100 milligrams of opium per 100 milliliters or per 100 grams;
Not more than 0.5 milligrams of difenoxin and not less than 25 micrograms of atropine sulfate per dosage unit.
The Board may except by regulation any compound, mixture or preparation containing any depressant substance listed in subdivision 1 from the application of all or any part of this chapter and such substances so excepted may be dispensed pursuant to § 54.1-3416.
2. Unless specifically excepted or listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers, and salts of isomers:
Pyrovalerone.
3. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation that contains any quantity of the following substances having a depressant effect on the central nervous system, including its salts:
Pregabalin](S)-3-(aminomethyl)-5-methylhexanoic acid_.
(1972, c. 798, § 54-524.84:12; 1976, c. 614; 1977, c. 302; 1979, c. 387; 1984, c. 186; 1986, c. 463; 1988, c. 765; 1992, c. 737; 1994, c. 763; 2003, c. 640; 2006, c. 346.)

§ 54.1-3455. Schedule VI.

The following classes of drugs and devices shall be controlled by Schedule VI:
1. Any compound, mixture, or preparation containing any stimulant or depressant drug exempted from Schedules III, IV or V and designated by the Board as subject to this section.
2. Every drug, not included in Schedules I, II, III, IV or V, or device, which because of its toxicity or other potentiality for harmful effect, or the method of its use, or the collateral measures necessary to its use, is not generally recognized among experts qualified by scientific training and experience to evaluate its safety and efficacy as safe for use except by or under the supervision of a practitioner licensed to prescribe or administer such drug or device.
3. Any drug, not included in Schedules I, II, III, IV or V, required by federal law to bear on its label prior to dispensing, at a minimum, the symbol "Rx only," or which bears the legend "Caution: Federal Law Prohibits Dispensing Without Prescription" or "Caution: Federal Law Restricts This Drug To Use By Or On The Order Of A Veterinarian" or any device which bears the legend "Caution: Federal Law Restricts This Device To Sales By Or On The Order Of A _____ ." (The blank should be completed with the word "Physician," "Dentist," "Veterinarian," or with the professional designation of any other practitioner licensed to use or order such device.)
(1972, c. 798, § 54-524.84:13; 1976, c. 614; 1977, c. 302; 1988, c. 765; 1999, c. 605.)

§ 54.1-3456. Designer drugs.

Any drug not listed on Schedule I or II in this chapter, which is privately compounded, with the specific intent to circumvent the provisions of this chapter, to emulate or simulate the effects of another drug or class of drugs listed on Schedule I or II in this chapter through chemical changes such as the addition, subtraction or rearranging of a radical or the addition, subtraction or rearranging of a substituent, shall be considered to be listed on the same schedule as the drug or class of drugs which it imitates in the same manner as any isomer, ester, ether, salts of isomers, esters and ethers of such drug or class of drugs.
(1987, c. 447, § 54-524.84:14; 1988, c. 765.)

Selected Sections from Title 18.2, Chapter 7. Crimes Involving Health and Safety.

§ 18.2-247. Use of terms "controlled substances," "marijuana," "Schedules I, II, III, IV, V and VI," "imitation controlled substance" and "counterfeit controlled substance" in Title 18.2.

A. Wherever the terms "controlled substances" and "Schedules I, II, III, IV, V and VI" are used in Title 18.2, such terms refer to those terms as they are used or defined in the Drug Control Act (§ 54.1-3400 et seq.).
B. The term "imitation controlled substance" when used in this article means (i) a counterfeit controlled substance or (ii) a pill, capsule, tablet, or substance in any form whatsoever which is not a controlled substance subject to abuse, and:
1. Which by overall dosage unit appearance, including color, shape, size, marking and packaging or by representations made, would cause the likelihood that such a pill, capsule, tablet, or substance in any other form whatsoever will be mistaken for a controlled substance unless such substance was introduced into commerce prior to the initial introduction into commerce of the controlled substance which it is alleged to imitate; or
2. Which by express or implied representations purports to act like a controlled substance as a stimulant or depressant of the central nervous system and which is not commonly used or recognized for use in that particular formulation for any purpose other than for such stimulant or depressant effect, unless marketed, promoted, or sold as permitted by the United States Food and Drug Administration.
C. In determining whether a pill, capsule, tablet, or substance in any other form whatsoever, is an "imitation controlled substance," there shall be considered, in addition to all other relevant factors, comparisons with accepted methods of marketing for legitimate nonprescription drugs for medicinal purposes rather than for drug abuse or any similar nonmedicinal use, including consideration of the packaging of the drug and its appearance in overall finished dosage form, promotional materials or representations, oral or written, concerning the drug, and the methods of distribution of the drug and where and how it is sold to the public.
D. The term "marijuana" when used in this article means any part of a plant of the genus Cannabis, whether growing or not, its seeds or resin; and every compound, manufacture, salt, derivative, mixture, or preparation of such plant, its seeds, or its resin. Marijuana shall not include any oily extract containing one or more cannabinoids unless such extract contains less than 12 percent of tetrahydrocannabinol by weight, or the mature stalks of such plant, fiber produced from such stalk, oil or cake made from the seed of such plant, unless such stalks, fiber, oil or cake is combined with other parts of plants of the genus Cannabis.
E. The term "counterfeit controlled substance" means a controlled substance that, without authorization, bears, is packaged in a container or wrapper that bears, or is otherwise labeled to bear, the trademark, trade name, or other identifying mark, imprint or device or any likeness thereof, of a drug manufacturer, processor, packer, or distributor other than the manufacturer, processor, packer, or distributor who did in fact so manufacture, process, pack or distribute such drug.
(1975, cc. 14, 15; 1979, c. 435; 1982, c. 462; 1984, c. 684; 1992, c. 756; 1999, cc. 661, 722; 2004, c. 688.)

§ 18.2-248. Manufacturing, selling, giving, distributing or possessing with intent to manufacture, sell, give or distribute a controlled substance or an imitation controlled substance prohibited; penalties.

A. Except as authorized in the Drug Control Act (§ 54.1-3400 et seq.), it shall be unlawful for any person to manufacture, sell, give, distribute, or possess with intent to manufacture, sell, give or distribute a controlled substance or an imitation controlled substance.
B. In determining whether any person intends to manufacture, sell, give or distribute an imitation controlled substance, the court may consider, in addition to all other relevant evidence, whether any distribution or attempted distribution of such pill, capsule, tablet or substance in any other form whatsoever included an exchange of or a demand for money or other property as consideration, and, if so, whether the amount of such consideration was substantially greater than the reasonable value of such pill, capsule, tablet or substance in any other form whatsoever, considering the actual chemical composition of such pill, capsule, tablet or substance in any other form whatsoever and, where applicable, the price at which over-the-counter substances of like chemical composition sell.
C. Except as provided in subsection C1, any person who violates this section with respect to a controlled substance classified in Schedule I or II shall upon conviction be imprisoned for not less than five nor more than 40 years and fined not more than $500,000. Upon a second or subsequent conviction of such a violation, any such person may, in the

discretion of the court or jury imposing the sentence, be sentenced to imprisonment for life or for any period not less than five years and be fined not more than $500,000.
When a person is convicted of a third or subsequent offense under this subsection and it is alleged in the warrant, indictment or information that he has been before convicted of two or more such offenses or of substantially similar offenses in any other jurisdiction which offenses would be felonies if committed in the Commonwealth and such prior convictions occurred before the date of the offense alleged in the warrant, indictment, or information, he shall be sentenced to imprisonment for life or for a period of not less than five years, five years of which shall be a mandatory minimum term of imprisonment to be served consecutively with any other sentence and he shall be fined not more than $500,000.
Any person who manufactures, sells, gives, distributes or possesses with the intent to manufacture, sell, give, or distribute the following is guilty of a felony punishable by a fine of not more than $1 million and imprisonment for five years to life, five years of which shall be a mandatory minimum term of imprisonment to be served consecutively with any other sentence:
1. 100 grams or more of a mixture or substance containing a detectable amount of heroin;
2. 500 grams or more of a mixture or substance containing a detectable amount of:
a. Coca leaves, except coca leaves and extracts of coca leaves from which cocaine, ecgonine, and derivatives of ecgonine or their salts have been removed;
b. Cocaine, its salts, optical and geometric isomers, and salts of isomers;
c. Ecgonine, its derivatives, their salts, isomers, and salts of isomers; or
d. Any compound, mixture, or preparation that contains any quantity of any of the substances referred to in subdivisions 2a through 2c;
3. 250 grams or more of a mixture or substance described in subdivisions 2a through 2d that contain cocaine base; or
4. 10 grams or more of methamphetamine, its salts, isomers, or salts of its isomers or 20 grams or more of a mixture or substance containing a detectable amount of methamphetamine, its salts, isomers, or salts of its isomers.
The mandatory minimum term of imprisonment to be imposed for a violation of this subsection shall not be applicable if the court finds that:
a. The person does not have a prior conviction for an offense listed in subsection C of § 17.1-805;
b. The person did not use violence or credible threats of violence or possess a firearm or other dangerous weapon in connection with the offense or induce another participant in the offense to do so;
c. The offense did not result in death or serious bodily injury to any person;
d. The person was not an organizer, leader, manager, or supervisor of others in the offense, and was not engaged in a continuing criminal enterprise as defined in subsection I; and
e. Not later than the time of the sentencing hearing, the person has truthfully provided to the Commonwealth all information and evidence the person has concerning the offense or offenses that were part of the same course of conduct or of a common scheme or plan, but the fact that the person has no relevant or useful other information to provide or that the Commonwealth already is aware of the information shall not preclude a determination by the court that the defendant has complied with this requirement.
C1. Any person who violates this section with respect to the manufacturing of methamphetamine, its salts, isomers, or salts of its isomers or less than 200 grams of a mixture or substance containing a detectable amount of methamphetamine, its salts, isomers, or salts of its isomers shall, upon conviction, be imprisoned for not less than 10 nor more than 40 years and fined not more than $500,000. Upon a second conviction of such a violation, any such person may, in the discretion of the court or jury imposing the sentence, be sentenced to imprisonment for life or for any period not less than 10 years, and be fined not more than $500,000. When a person is convicted of a third or subsequent offense under this subsection and it is alleged in the warrant, indictment, or information that he has been previously convicted of two or more such offenses or of substantially similar offenses in any other jurisdiction, which offenses would be felonies if committed in the Commonwealth and such prior convictions occurred before the date of the offense alleged in the warrant, indictment, or information, he shall be sentenced to imprisonment for life or for a period not less than 10 years, three years of which shall be a mandatory minimum term of imprisonment to be served consecutively with any other sentence and he shall be fined not more than $500,000. Upon conviction, in addition to any other punishment, a person found guilty of this offense shall be ordered by the court to make restitution, as the court deems appropriate, to any innocent property owner whose property is damaged, destroyed, or otherwise rendered unusable as a result of such methamphetamine production. This restitution may include the person's or his estate's estimated or actual expenses associated with cleanup, removal, or repair of the affected property.

D. If such person proves that he gave, distributed or possessed with intent to give or distribute a controlled substance classified in Schedule I or II only as an accommodation to another individual who is not an inmate in a community correctional facility, local correctional facility or state correctional facility as defined in § 53.1-1 or in the custody of an employee thereof, and not with intent to profit thereby from any consideration received or expected nor to induce the recipient or intended recipient of the controlled substance to use or become addicted to or dependent upon such controlled substance, he shall be guilty of a Class 5 felony.

E. If the violation of the provisions of this article consists of the filling by a pharmacist of the prescription of a person authorized under this article to issue the same, which prescription has not been received in writing by the pharmacist prior to the filling thereof, and such written prescription is in fact received by the pharmacist within one week of the time of filling the same, or if such violation consists of a request by such authorized person for the filling by a pharmacist of a prescription which has not been received in writing by the pharmacist and such prescription is, in fact, written at the time of such request and delivered to the pharmacist within one week thereof, either such offense shall constitute a Class 4 misdemeanor.

E1. Any person who violates this section with respect to a controlled substance classified in Schedule III except for an anabolic steroid classified in Schedule III, constituting a violation of § 18.2-248.5, shall be guilty of a Class 5 felony.

E2. Any person who violates this section with respect to a controlled substance classified in Schedule IV shall be guilty of a Class 6 felony.

E3. Any person who proves that he gave, distributed or possessed with the intent to give or distribute a controlled substance classified in Schedule III or IV, except for an anabolic steroid classified in Schedule III, constituting a violation of § 18.2-248.5, only as an accommodation to another individual who is not an inmate in a community correctional facility, local correctional facility or state correctional facility as defined in § 53.1-1 or in the custody of an employee thereof, and not with the intent to profit thereby from any consideration received or expected nor to induce the recipient or intended recipient of the controlled substance to use or become addicted to or dependent upon such controlled substance, is guilty of a Class 1 misdemeanor.

F. Any person who violates this section with respect to a controlled substance classified in Schedule V or an imitation controlled substance which imitates a controlled substance classified in Schedule V, shall be guilty of a Class 1 misdemeanor.

G. Any person who violates this section with respect to an imitation controlled substance which imitates a controlled substance classified in Schedule I, II, III or IV shall be guilty of a Class 6 felony. In any prosecution brought under this subsection, it is not a defense to a violation of this subsection that the defendant believed the imitation controlled substance to actually be a controlled substance.

H. Any person who manufactures, sells, gives, distributes or possesses with the intent to manufacture, sell, give or distribute the following:

1. 1.0 kilograms or more of a mixture or substance containing a detectable amount of heroin;

2. 5.0 kilograms or more of a mixture or substance containing a detectable amount of:

a. Coca leaves, except coca leaves and extracts of coca leaves from which cocaine, ecgonine, and derivatives of ecgonine or their salts have been removed;

b. Cocaine, its salts, optical and geometric isomers, and salts of isomers;

c. Ecgonine, its derivatives, their salts, isomers, and salts of isomers; or

d. Any compound, mixture, or preparation which contains any quantity of any of the substances referred to in subdivisions a through c;

3. 2.5 kilograms or more of a mixture or substance described in subdivision 2 which contains cocaine base;

4. 100 kilograms or more of a mixture or substance containing a detectable amount of marijuana; or

5. 100 grams or more of methamphetamine, its salts, isomers, or salts of its isomers or 200 grams or more of a mixture or substance containing a detectable amount of methamphetamine, its salts, isomers, or salts of its isomers shall be guilty of a felony punishable by a fine of not more than $1 million and imprisonment for 20 years to life, 20 years of which shall be a mandatory minimum sentence. Such mandatory minimum sentence shall not be applicable if the court finds that (i) the person does not have a prior conviction for an offense listed in subsection C of § 17.1-805; (ii) the person did not use violence or credible threats of violence or possess a firearm or other dangerous weapon in connection with the offense or induce another participant in the offense to do so; (iii) the offense did not result in death or serious bodily injury to any person; (iv) the person was not an organizer, leader, manager, or supervisor of others in the offense, and was not engaged in a continuing criminal enterprise as defined in subsection I of this section; and (v) not later than the time of the sentencing hearing, the person has truthfully provided to the Commonwealth all information and evidence the person has concerning the offense or offenses that were part of the same course of conduct or of a common scheme or plan, but the

fact that the person has no relevant or useful other information to provide or that the Commonwealth already is aware of the information shall not preclude a determination by the court that the defendant has complied with this requirement.

H1. Any person who was the principal or one of several principal administrators, organizers or leaders of a continuing criminal enterprise shall be guilty of a felony if (i) the enterprise received at least $100,000 but less than $250,000 in gross receipts during any 12-month period of its existence from the manufacture, importation, or distribution of heroin or cocaine or ecgonine or methamphetamine or the derivatives, salts, isomers, or salts of isomers thereof or marijuana or (ii) the person engaged in the enterprise to manufacture, sell, give, distribute or possess with the intent to manufacture, sell, give or distribute the following during any 12-month period of its existence:

1. At least 1.0 kilograms but less than 5.0 kilograms of a mixture or substance containing a detectable amount of heroin;
2. At least 5.0 kilograms but less than 10 kilograms of a mixture or substance containing a detectable amount of:

a. Coca leaves, except coca leaves and extracts of coca leaves from which cocaine, ecgonine, and derivatives of ecgonine or their salts have been removed;

b. Cocaine, its salts, optical and geometric isomers, and salts of isomers;

c. Ecgonine, its derivatives, their salts, isomers, and salts of isomers; or

d. Any compound, mixture, or preparation which contains any quantity of any of the substances referred to in subdivisions a through c;

3. At least 2.5 kilograms but less than 5.0 kilograms of a mixture or substance described in subdivision 2 which contains cocaine base;
4. At least 100 kilograms but less than 250 kilograms of a mixture or substance containing a detectable amount of marijuana; or
5. At least 100 grams but less than 250 grams of methamphetamine, its salts, isomers, or salts of its isomers or at least 200 grams but less than 1.0 kilograms of a mixture or substance containing a detectable amount of methamphetamine, its salts, isomers, or salts of its isomers.

A conviction under this section shall be punishable by a fine of not more than $1 million and imprisonment for 20 years to life, 20 years of which shall be a mandatory minimum sentence.

H2. Any person who was the principal or one of several principal administrators, organizers or leaders of a continuing criminal enterprise if (i) the enterprise received $250,000 or more in gross receipts during any 12-month period of its existence from the manufacture, importation, or distribution of heroin or cocaine or ecgonine or methamphetamine or the derivatives, salts, isomers, or salts of isomers thereof or marijuana or (ii) the person engaged in the enterprise to manufacture, sell, give, distribute or possess with the intent to manufacture, sell, give or distribute the following during any 12-month period of its existence:

1. At least 5.0 kilograms of a mixture or substance containing a detectable amount of heroin;
2. At least 10 kilograms of a mixture or substance containing a detectable amount of:

a. Coca leaves, except coca leaves and extracts of coca leaves from which cocaine, ecgonine, and derivatives of ecgonine or their salts have been removed;

b. Cocaine, its salts, optical and geometric isomers, and salts of isomers;

c. Ecgonine, its derivatives, their salts, isomers, and salts of isomers; or

d. Any compound, mixture, or preparation which contains any quantity of any of the substances referred to in subdivisions a through c;

3. At least 5.0 kilograms of a mixture or substance described in subdivision 2 which contains cocaine base;
4. At least 250 kilograms of a mixture or substance containing a detectable amount of marijuana; or
5. At least 250 grams of methamphetamine, its salts, isomers, or salts of its isomers or at least 1.0 kilograms of a mixture or substance containing a detectable amount of methamphetamine, its salts, isomers, or salts of its isomers shall be guilty of a felony punishable by a fine of not more than $1 million and imprisonment for life, which shall be served with no suspension in whole or in part. Such punishment shall be made to run consecutively with any other sentence. However, the court may impose a mandatory minimum sentence of 40 years if the court finds that the defendant substantially cooperated with law-enforcement authorities.

I. For purposes of this section, a person is engaged in a continuing criminal enterprise if (i) he violates any provision of this section, the punishment for which is a felony and either (ii) such violation is a part of a continuing series of violations of this section which are undertaken by such person in concert with five or more other persons with respect to whom such person occupies a position of organizer, a supervisory position, or any other position of management, and from which such person obtains substantial income or resources or (iii) such violation is committed, with respect to methamphetamine

or other controlled substance classified in Schedule I or II, for the benefit of, at the direction of, or in association with any criminal street gang as defined in § 18.2-46.1.
J. Except as authorized in the Drug Control Act (§ 54.1-3400 et seq.), any person who possesses any two or more different substances listed below with the intent to manufacture methamphetamine, methcathinone or amphetamine is guilty of a Class 6 felony: liquified ammonia gas, ether, hypophosphorus acid solutions, hypophosphite salts, hydrochloric acid, iodine crystals or tincture of iodine, phenylacetone, phenylacetic acid, red phosphorus, methylamine, methyl formamide, lithium metal, sodium metal, sulfuric acid, sodium hydroxide, potassium dichromate, sodium dichromate, potassium permanganate, chromium trioxide, methylbenzene, methamphetamine precursor drugs, trichloroethane, or 2-propanone.
K. The term "methamphetamine precursor drug," when used in this article, means a drug or product containing ephedrine, pseudoephedrine, or phenylpropanolamine or any of their salts, optical isomers, or salts of optical isomers.
(Code 1950, § 54-524.101:1; 1972, c. 798; 1973, c. 479; 1974, c. 586; 1975, cc. 14, 15; 1976, c. 614; 1977, c. 409; 1978, cc. 177, 779; 1979, c. 435; 1982, cc. 276, 462; 1985, c. 569; 1986, c. 453; 1988, c. 355; 1990, c. 82; 1991, c. 13; 1992, cc. 685, 737, 756; 1995, c. 538; 1999, c. 722; 2000, cc. 1020, 1041; 2004, c. 461; 2005, cc. 174, 759, 796, 923, 941; 2006, cc. 697, 759.)

§ 18.2-248.01. Transporting controlled substances into the Commonwealth; penalty.

Except as authorized in the Drug Control Act (§ 54.1-3400 et seq.) it is unlawful for any person to transport into the Commonwealth by any means with intent to sell or distribute one ounce or more of cocaine, coca leaves or any salt, compound, derivative or preparation thereof as described in Schedule II of the Drug Control Act or one ounce or more of any other Schedule I or II controlled substance or five or more pounds of marijuana. A violation of this section shall constitute a separate and distinct felony. Upon conviction, the person shall be sentenced to not less than five years nor more than 40 years imprisonment, three years of which shall be a mandatory minimum term of imprisonment, and a fine not to exceed $1,000,000. A second or subsequent conviction hereunder shall be punishable by a mandatory minimum term of imprisonment of 10 years, which shall be served consecutively with any other sentence.
(1992, c. 723; 2000, cc. 1020, 1041; 2004, c. 461.)

§ 18.2-248.1. Penalties for sale, gift, distribution or possession with intent to sell, give or distribute marijuana.

Except as authorized in the Drug Control Act, Chapter 34 of Title 54.1, it shall be unlawful for any person to sell, give, distribute or possess with intent to sell, give or distribute marijuana.
(a) Any person who violates this section with respect to:
(1) Not more than one-half ounce of marijuana is guilty of a Class 1 misdemeanor;
(2) More than one-half ounce but not more than five pounds of marijuana is guilty of a Class 5 felony;
(3) More than five pounds of marijuana is guilty of a felony punishable by imprisonment of not less than five nor more than 30 years.
If such person proves that he gave, distributed or possessed with intent to give or distribute marijuana only as an accommodation to another individual and not with intent to profit thereby from any consideration received or expected nor to induce the recipient or intended recipient of the marijuana to use or become addicted to or dependent upon such marijuana, he shall be guilty of a Class 1 misdemeanor.
(b) Any person who gives, distributes or possesses marijuana as an accommodation and not with intent to profit thereby, to an inmate of a state or local correctional facility as defined in § 53.1-1, or in the custody of an employee thereof shall be guilty of a Class 4 felony.
(c) Any person who manufactures marijuana, or possesses marijuana with the intent to manufacture such substance, not for his own use is guilty of a felony punishable by imprisonment of not less than five nor more than 30 years and a fine not to exceed $10,000.
(d) When a person is convicted of a third or subsequent felony offense under this section and it is alleged in the warrant, indictment or information that he has been before convicted of two or more felony offenses under this section or of substantially similar offenses in any other jurisdiction which offenses would be felonies if committed in the Commonwealth and such prior convictions occurred before the date of the offense alleged in the warrant, indictment or information, he shall be sentenced to imprisonment for life or for any period not less than five years, five years of which shall be a mandatory minimum term of imprisonment to be served consecutively with any other sentence and he shall be fined not more than $500,000.

(1979, c. 435; 1986, c. 467; 2000, cc. 819, 1020, 1041; 2004, c. 461; 2006, cc. 697, 759.)

§ 18.2-248.3. Professional use of imitation controlled substances.

No civil or criminal liability shall be imposed by virtue of this article on any person licensed under the Drug Control Act, Chapter 34 of Title 54.1, who manufactures, sells, gives or distributes an imitation controlled substance for use as a placebo by a licensed practitioner in the course of professional practice or research.
(1982, c. 462.)

§ 18.2-248.8. Sale of the methamphetamine precursors ephedrine and pseudoephedrine; penalty.

A. The sale of any product containing ephedrine, pseudoephedrine, or any of their salts, isomers, or salts of isomers, alone or in a mixture, shall be restricted when provided or sold by a retail distributor or pharmacy as follows:
1. Retail sales shall be limited to no more than 3.6 grams total of either ephedrine or pseudoephedrine daily per individual customer.
2. Retail personnel shall be instructed in special procedures to be used in the sale of drug products containing ephedrine or pseudoephedrine.
3. Effective September 30, 2006, when any substance containing ephedrine or pseudoephedrine is provided or sold:
a. The product shall only be displayed for sale behind a store counter that is not accessible to consumers, or in a locked case that requires assistance by a store employee for customer access;
b. Any person purchasing, receiving, or otherwise acquiring any such substance shall, prior to taking possession, present photo identification issued by a government or an educational institution;
c. The seller shall maintain a written or electronic log with the purchaser's name and address, product name, quantity sold, and the date and time of the transaction;
d. The purchaser shall enter into the log his name and address, the time and date of the sale, and sign the record;
e. The purchaser shall sign the record acknowledging an understanding of the applicable sales limit and that entering false statements or misrepresentations in the log may subject the purchaser to criminal penalties under § 1001 of Title 18 of the United States Code; and
f. The sale of a single package to an individual shall not require entry in the log provided it is an isolated sale and the package contains not more than 60 milligrams of pseudoephedrine.
B. This section does not apply to:
1. Any quantity of such substance properly dispensed under a valid prescription; or
2. Any product that the United States Attorney General determines cannot be used in the illicit manufacture of methamphetamine.
C. Retail sellers of ephedrine and pseudoephedrine shall maintain records of all such sales transactions for a period of two years from the date of the last entry beginning September 30, 2006. Retail sellers shall not use or disclose the information in the records for any purpose other than to ensure compliance with this section, the federal Combat Methamphetamine Epidemic Act of 2005, or to facilitate a product recall necessary to protect public health and safety. However, retail sellers shall report the information in the log to law-enforcement personnel upon request and any retail seller who in good faith releases information maintained in the log to law-enforcement authorities is immune from civil liability for such release unless the release constitutes gross negligence or intentional, wanton or willful misconduct.
D. Any person who willfully violates this section is guilty of a Class 1 misdemeanor.
(2006, cc. 865, 893.)

§ 18.2-250. Possession of controlled substances unlawful.

A. It is unlawful for any person knowingly or intentionally to possess a controlled substance unless the substance was obtained directly from, or pursuant to, a valid prescription or order of a practitioner while acting in the course of his professional practice, or except as otherwise authorized by the Drug Control Act (§ 54.1-3400 et seq.).
Upon the prosecution of a person for a violation of this section, ownership or occupancy of premises or vehicle upon or in which a controlled substance was found shall not create a presumption that such person either knowingly or intentionally possessed such controlled substance.
(a) Any person who violates this section with respect to any controlled substance classified in Schedule I or II of the Drug Control Act shall be guilty of a Class 5 felony.

(b) Any person other than an inmate of a penal institution as defined in § 53.1-1 or in the custody of an employee thereof, who violates this section with respect to a controlled substance classified in Schedule III shall be guilty of a Class 1 misdemeanor.
(b1) Violation of this section with respect to a controlled substance classified in Schedule IV shall be punishable as a Class 2 misdemeanor.
(b2) Violation of this section with respect to a controlled substance classified in Schedule V shall be punishable as a Class 3 misdemeanor.
(c) Violation of this section with respect to a controlled substance classified in Schedule VI shall be punishable as a Class 4 misdemeanor.
B. The provisions of this section shall not apply to members of state, federal, county, city or town law-enforcement agencies, jail officers, or correctional officers, as defined in § 53.1-1, certified as handlers of dogs trained in the detection of controlled substances when possession of a controlled substance or substances is necessary in the performance of their duties.
(Code 1950, § 54-524.101:2; 1972, c. 798; 1973, c. 64; 1975, cc. 14, 15; 1976, c. 614; 1978, cc. 151, 177, 179; 1979, c. 435; 1980, c. 285; 1991, c. 649; 1998, c. 116.)

§ 18.2-250.1. Possession of marijuana unlawful.

A. It is unlawful for any person knowingly or intentionally to possess marijuana unless the substance was obtained directly from, or pursuant to, a valid prescription or order of a practitioner while acting in the course of his professional practice, or except as otherwise authorized by the Drug Control Act (§ 54.1-3400 et seq.).
Upon the prosecution of a person for violation of this section, ownership or occupancy of the premises or vehicle upon or in which marijuana was found shall not create a presumption that such person either knowingly or intentionally possessed such marijuana.
Any person who violates this section shall be guilty of a misdemeanor, and be confined in jail not more than thirty days and a fine of not more than $500, either or both; any person, upon a second or subsequent conviction of a violation of this section, shall be guilty of a Class 1 misdemeanor.
B. The provisions of this section shall not apply to members of state, federal, county, city or town law-enforcement agencies, jail officers, or correctional officers, as defined in § 53.1-1, certified as handlers of dogs trained in the detection of controlled substances when possession of marijuana is necessary for the performance of their duties.
(1979, c. 435; 1991, c. 649; 1998, c. 116.)

§ 18.2-251.1. Possession or distribution of marijuana for medical purposes permitted.

A. No person shall be prosecuted under § 18.2-250 or § 18.2-250.1 for the possession of marijuana or tetrahydrocannabinol when that possession occurs pursuant to a valid prescription issued by a medical doctor in the course of his professional practice for treatment of cancer or glaucoma.
B. No medical doctor shall be prosecuted under § 18.2-248 or § 18.2-248.1 for dispensing or distributing marijuana or tetrahydrocannabinol for medical purposes when such action occurs in the course of his professional practice for treatment of cancer or glaucoma.
C. No pharmacist shall be prosecuted under §§ 18.2-248 to 18.2-248.1 for dispensing or distributing marijuana or tetrahydrocannabinol to any person who holds a valid prescription of a medical doctor for such substance issued in the course of such doctor's professional practice for treatment of cancer or glaucoma.
(1979, c. 435.)

§ 18.2-251.2. Possession and distribution of flunitrazepam; enhanced penalty.

Notwithstanding the provisions of §§ 54.1-3446 and 54.1-3452, the drug flunitrazepam shall be deemed to be listed on Schedule I for the purposes of penalties for violations of the Drug Control Act (§ 54.1-3400 et seq.). Any person knowingly manufacturing, selling, giving, distributing or possessing the drug flunitrazepam shall be punished under the penalties prescribed for such violations in accordance with §§ 18.2-248 and 18.2-250.
(1997, c. 595.)

§ 18.2-251.3. Possession and distribution of gamma-butyrolactone; 1, 4-butanediol; enhanced penalty.

Any person who knowingly manufactures, sells, gives, distributes or possesses with the intent to distribute the substances gamma-butyrolactone; or 1, 4-butanediol, when intended for human consumption shall be guilty of a Class 3 felony.
(2000, c. 348.)

§ 18.2-251.4. Defeating drug and alcohol screening tests; penalty.

A. It is unlawful for a person to:
1. Sell, give away, distribute, transport or market human urine in the Commonwealth with the intent of using the urine to defeat a drug or alcohol screening test;
2. Attempt to defeat a drug or alcohol screening test by the substitution of a sample;
3. Adulterate a urine or other bodily fluid sample with the intent to defraud a drug or alcohol screening test.
B. A violation of this section is a Class 1 misdemeanor.
(2001, c. 379.)

§ 18.2-256. Conspiracy.

Any person who conspires to commit any offense defined in this article or in the Drug Control Act (§ 54.1-3400 et seq.) is punishable by imprisonment or fine or both which may not be less than the minimum punishment nor exceed the maximum punishment prescribed for the offense, the commission of which was the object of the conspiracy.
(Code 1950, § 54-524.104; 1970, c. 650; 1972, c. 798; 1975, cc. 14, 15; 1978, c. 130.)

§ 18.2-257. Attempts.

(a) Any person who attempts to commit any offense defined in this article or in the Drug Control Act (§ 54.1-3400 et seq.) which is a felony shall be imprisoned for not less than one nor more than ten years; provided, however, that any person convicted of attempting to commit a felony for which a lesser punishment may be imposed may be punished according to such lesser penalty.
(b) Any person who attempts to commit any offense defined in this article or in the Drug Control Act which is a misdemeanor shall be guilty of a Class 2 misdemeanor; provided, however, that any person convicted of attempting to commit a misdemeanor for which a lesser punishment may be imposed may be punished according to such lesser penalty.
(Code 1950, § 54-524.104:1; 1972, c. 798; 1973, c. 447; 1975, cc. 14, 15; 1979, c. 435.)

§ 18.2-258.1. Obtaining drugs, procuring administration of controlled substances, etc., by fraud, deceit or forgery.

A. It shall be unlawful for any person to obtain or attempt to obtain any drug or procure or attempt to procure the administration of any controlled substance or marijuana: (i) by fraud, deceit, misrepresentation, embezzlement, or subterfuge; or (ii) by the forgery or alteration of a prescription or of any written order; or (iii) by the concealment of a material fact; or (iv) by the use of a false name or the giving of a false address.
B. It shall be unlawful for any person to furnish false or fraudulent information in or omit any information from, or willfully make a false statement in, any prescription, order, report, record, or other document required by Chapter 34 (§ 54.1-3400 et seq.) of Title 54.1.
C. It shall be unlawful for any person to use in the course of the manufacture or distribution of a controlled substance or marijuana a license number which is fictitious, revoked, suspended, or issued to another person.
D. It shall be unlawful for any person, for the purpose of obtaining any controlled substance or marijuana, to falsely assume the title of, or represent himself to be, a manufacturer, wholesaler, pharmacist, physician, dentist, veterinarian or other authorized person.
E. It shall be unlawful for any person to make or utter any false or forged prescription or false or forged written order.
F. It shall be unlawful for any person to affix any false or forged label to a package or receptacle containing any controlled substance.
G. This section shall not apply to officers and employees of the United States, of this Commonwealth or of a political subdivision of this Commonwealth acting in the course of their employment, who obtain such drugs for investigative,

research or analytical purposes, or to the agents or duly authorized representatives of any pharmaceutical manufacturer who obtain such drugs for investigative, research or analytical purposes and who are acting in the course of their employment; provided that such manufacturer is licensed under the provisions of the Federal Food, Drug and Cosmetic Act; and provided further, that such pharmaceutical manufacturer, its agents and duly authorized representatives file with the Board such information as the Board may deem appropriate.

H. Except as otherwise provided in this subsection, any person who shall violate any provision herein shall be guilty of a Class 6 felony.

Whenever any person who has not previously been convicted of any offense under this article or under any statute of the United States or of any state relating to narcotic drugs, marijuana, or stimulant, depressant, or hallucinogenic drugs, or has not previously had a proceeding against him for violation of such an offense dismissed, or reduced as provided in this section, pleads guilty to or enters a plea of not guilty to the court for violating this section, upon such plea if the facts found by the court would justify a finding of guilt, the court may place him on probation upon terms and conditions.

As a term or condition, the court shall require the accused to be evaluated and enter a treatment and/or education program, if available, such as, in the opinion of the court, may be best suited to the needs of the accused. This program may be located in the judicial circuit in which the charge is brought or in any other judicial circuit as the court may provide. The services shall be provided by a program certified or licensed by the Department of Mental Health, Mental Retardation and Substance Abuse Services. The court shall require the person entering such program under the provisions of this section to pay all or part of the costs of the program, including the costs of the screening, evaluation, testing and education, based upon the person's ability to pay unless the person is determined by the court to be indigent.

As a condition of supervised probation, the court shall require the accused to remain drug free during the period of probation and submit to such tests during that period as may be necessary and appropriate to determine if the accused is drug free. Such testing may be conducted by the personnel of any screening, evaluation, and education program to which the person is referred or by the supervising agency.

Unless the accused was fingerprinted at the time of arrest, the court shall order the accused to report to the original arresting law-enforcement agency to submit to fingerprinting.

Upon violation of a term or condition, the court may enter an adjudication of guilt upon the felony and proceed as otherwise provided. Upon fulfillment of the terms and conditions of probation, the court shall find the defendant guilty of a Class 1 misdemeanor.

(1977, c. 558; 1979, c. 435; 1992, c. 76; 1997, c. 542.)

§ 18.2-259. Penalties to be in addition to civil or administrative sanctions.

Any penalty imposed for violation of this article or of the Drug Control Act (§ 54.1-3400 et seq.) shall be in addition to, and not in lieu of, any civil or administrative penalty or sanction authorized by law.

(Code 1950, § 54-524.105; 1970, c. 650; 1975, cc. 14, 15.)

§ 18.2-260. Prescribing, dispensing, etc., drug except as authorized in article and Drug Control Act; violations for which no penalty provided.

It shall be unlawful for any person to prescribe, administer or dispense any drug except as authorized in the Drug Control Act (§ 54.1-3400 et seq.) or in this article. Any person who violates any provision of the Drug Control Act or of this article, for which no penalty is elsewhere specified in this article or in Article 7 (§ 54.1-3466 et seq.) of the Drug Control Act, shall be guilty of a Class 1 misdemeanor.

(Code 1950, § 54-524.106; 1970, c. 650; 1973, c. 548; 1975, cc. 14, 15.)

§ 18.2-260.1. Falsifying patient records.

Any person who fraudulently falsifies any patient record shall be guilty of a Class 3 misdemeanor.

(1997, c. 619.)

§ 18.2-261. Monetary penalty.

Any person licensed by the State Board of Pharmacy who violates any of the provisions of the Drug Control Act (§ 54.1-3400 et seq.) or of this article, and who is not criminally prosecuted, shall be subject to the monetary penalty provided in this section. If, by a majority vote, the Board shall determine that the respondent is guilty of the violation complained of, the Board shall proceed to determine the amount of the monetary penalty for such violation, which shall not exceed the sum of $1,000 for each violation. Such penalty may be sued for and recovered in the name of the Commonwealth.

(Code 1950, § 54-524.107; 1970, c. 650; 1975, cc. 14, 15; 1980, c. 678.)

Law on Patient Health Records

§ 32.1-127.1:03. Health records privacy.

A. There is hereby recognized an individual's right of privacy in the content of his health records. Health records are the property of the health care entity maintaining them, and, except when permitted or required by this section or by other provisions of state law, no health care entity, or other person working in a health care setting, may disclose an individual's health records.

Pursuant to this subsection:

1. Health care entities shall disclose health records to the individual who is the subject of the health record, except as provided in subsections E and F of this section and subsection B of § 8.01-413.

2. Health records shall not be removed from the premises where they are maintained without the approval of the health care entity that maintains such health records, except in accordance with a court order or subpoena consistent with subsection C of § 8.01-413 or with this section or in accordance with the regulations relating to change of ownership of health records promulgated by a health regulatory board established in Title 54.1.

3. No person to whom health records are disclosed shall redisclose or otherwise reveal the health records of an individual, beyond the purpose for which such disclosure was made, without first obtaining the individual's specific authorization to such redisclosure. This redisclosure prohibition shall not, however, prevent (i) any health care entity that receives health records from another health care entity from making subsequent disclosures as permitted under this section and the federal Department of Health and Human Services regulations relating to privacy of the electronic transmission of data and protected health information promulgated by the United States Department of Health and Human Services as required by the Health Insurance Portability and Accountability Act (HIPAA) (42 U.S.C. § 1320d et seq.) or (ii) any health care entity from furnishing health records and aggregate or other data, from which individually identifying prescription information has been removed, encoded or encrypted, to qualified researchers, including, but not limited to, pharmaceutical manufacturers and their agents or contractors, for purposes of clinical, pharmaco-epidemiological, pharmaco-economic, or other health services research.

B. As used in this section:

"Agent" means a person who has been appointed as an individual's agent under a power of attorney for health care or an advance directive under the Health Care Decisions Act (§ 54.1-2981 et seq.).

"Certification" means a written representation that is delivered by hand, by first-class mail, by overnight delivery service, or by facsimile if the sender obtains a facsimile-machine-generated confirmation reflecting that all facsimile pages were successfully transmitted.

"Guardian" means a court-appointed guardian of the person.

"Health care clearinghouse" means, consistent with the definition set out in 45 C.F.R. § 160.103, a public or private entity, such as a billing service, repricing company, community health management information system or community health information system, and "value-added" networks and switches, that performs either of the following functions: (i) processes or facilitates the processing of health information received from another entity

in a nonstandard format or containing nonstandard data content into standard data elements or a standard transaction; or (ii) receives a standard transaction from another entity and processes or facilitates the processing of health information into nonstandard format or nonstandard data content for the receiving entity.

"Health care entity" means any health care provider, health plan or health care clearinghouse.

"Health care provider" means those entities listed in the definition of "health care provider" in § 8.01-581.1, except that state-operated facilities shall also be considered health care providers for the purposes of this section. Health care provider shall also include all persons who are licensed, certified, registered or permitted or who hold a multistate licensure privilege issued by any of the health regulatory boards within the Department of Health Professions, except persons regulated by the Board of Funeral Directors and Embalmers or the Board of Veterinary Medicine.

"Health plan" means an individual or group plan that provides, or pays the cost of, medical care. "Health plan" shall include any entity included in such definition as set out in 45 C.F.R. § 160.103.

"Health record" means any written, printed or electronically recorded material maintained by a health care entity in the course of providing health services to an individual concerning the individual and the services provided. "Health record" also includes the substance of any communication made by an individual to a health care entity in confidence during or in connection with the provision of health services or information otherwise acquired by the health care entity about an individual in confidence and in connection with the provision of health services to the individual.

"Health services" means, but shall not be limited to, examination, diagnosis, evaluation, treatment, pharmaceuticals, aftercare, habilitation or rehabilitation and mental health therapy of any kind, as well as payment or reimbursement for any such services.

"Individual" means a patient who is receiving or has received health services from a health care entity.

"Individually identifying prescription information" means all prescriptions, drug orders or any other prescription information that specifically identifies an individual.

"Parent" means a biological, adoptive or foster parent.

"Psychotherapy notes" means comments, recorded in any medium by a health care provider who is a mental health professional, documenting or analyzing the contents of conversation during a private counseling session with an individual or a group, joint, or family counseling session that are separated from the rest of the individual's health record. "Psychotherapy notes" shall not include annotations relating to medication and prescription monitoring, counseling session start and stop times, treatment modalities and frequencies, clinical test results, or any summary of any symptoms, diagnosis, prognosis, functional status, treatment plan, or the individual's progress to date.

C. The provisions of this section shall not apply to any of the following:

1. The status of and release of information governed by §§ 65.2-604 and 65.2-607 of the Virginia Workers' Compensation Act;

2. Except where specifically provided herein, the health records of minors; or

3. The release of juvenile health records to a secure facility or a shelter care facility pursuant to § 16.1-248.3.

D. Health care entities may, and, when required by other provisions of state law, shall, disclose health records:

1. As set forth in subsection E, pursuant to the written authorization of (i) the individual or (ii) in the case of a minor, (a) his custodial parent, guardian or other person authorized to consent to treatment of minors pursuant to § 54.1-2969 or (b) the minor himself, if he has consented to his own treatment pursuant to ~~subsection E of~~ § 54.1-2969, or (iii) in emergency cases or situations where it is impractical to obtain an individual's written authorization, pursuant to the individual's oral authorization for a health care provider or health plan to discuss the individual's health records with a third party specified by the individual;

2. In compliance with a subpoena issued in accord with subsection H, pursuant to court order upon good cause shown or in compliance with a subpoena issued pursuant to subsection C of § 8.01-413;

3. In accord with subsection F of § 8.01-399 including, but not limited to, situations where disclosure is reasonably necessary to establish or collect a fee or to defend a health care entity or the health care entity's employees or staff against any accusation of wrongful conduct; also as required in the course of an investigation, audit, review or proceedings regarding a health care entity's conduct by a duly authorized law-enforcement, licensure, accreditation, or professional review entity;

4. In testimony in accordance with §§ 8.01-399 and 8.01-400.2;

5. In compliance with the provisions of § 8.01-413;

6. As required or authorized by law relating to public health activities, health oversight activities, serious threats to health or safety, or abuse, neglect or domestic violence, relating to contagious disease, public safety, and suspected child or adult abuse reporting requirements, including, but not limited to, those contained in §§ 32.1-36, 32.1-36.1, 32.1-40, 32.1-41, 32.1-127.1:04, 32.1-276.5, 32.1-283, 32.1-283.1, 37.2-710, 37.2-839, 53.1-40.10, 54.1-2400.6, 54.1-2400.7, 54.1-2403.3, 54.1-2506, 54.1-2966, 54.1-2966.1, 54.1-2967, 54.1-2968, 63.2-1509 and 63.2-1606;

7. Where necessary in connection with the care of the individual;

8. In *connection with the health care entity's own health care operations or the health care operations of another health care entity, as specified in 45 C.F.R. § 164.501, or in* the normal course of business in accordance with accepted standards of practice within the health services setting; however, the maintenance, storage, and disclosure of the mass of prescription dispensing records maintained in a pharmacy registered or permitted in Virginia shall only be accomplished in compliance with §§ 54.1-3410, 54.1-3411 and 54.1-3412;

9. When the individual has waived his right to the privacy of the health records;

10. When examination and evaluation of an individual are undertaken pursuant to judicial or administrative law order, but only to the extent as required by such order;

11. To the guardian ad litem and any attorney representing the respondent in the course of a guardianship proceeding of an adult patient who is the respondent in a proceeding under Chapter 10 (§ 37.2-1000 et seq.) of Title 37.2;

12. To the attorney appointed by the court to represent an individual who is or has been a patient who is the subject of a civil commitment proceeding under Article 5 (§ 37.2-814 et seq.) of Chapter 8 of Title 37.2 or a judicial authorization for treatment proceeding pursuant to Chapter 11 (§ 37.2-1100 et seq.) of Title 37.2;

13. To the attorney and/or guardian ad litem of a minor who represents such minor in any judicial or administrative proceeding, if the court or administrative hearing officer has entered an order granting the attorney or guardian ad litem this right and such attorney or guardian ad litem presents evidence to the health care entity of such order;

14. With regard to the Court-Appointed Special Advocate (CASA) program, a minor's health records in accord with § 9.1-156;

15. To an agent appointed under an individual's power of attorney or to an agent or decision maker designated in an individual's advance directive for health care or for decisions on anatomical gifts and organ, tissue or eye donation or to any other person consistent with the provisions of the Health Care Decisions Act (§ 54.1-2981 et seq.);

16. To third-party payors and their agents for purposes of reimbursement;

17. As is necessary to support an application for receipt of health care benefits from a governmental agency or as required by an authorized governmental agency reviewing such application or reviewing benefits already provided or as necessary to the coordination of prevention and control of disease, injury, or disability and delivery of such health care benefits pursuant to § 32.1-127.1:04;

18. Upon the sale of a medical practice as provided in § 54.1-2405; or upon a change of ownership or closing of a pharmacy pursuant to regulations of the Board of Pharmacy;

19. In accord with subsection B of § 54.1-2400.1, to communicate an individual's specific and immediate threat to cause serious bodily injury or death of an identified or readily identifiable person;

20. Where necessary in connection with the implementation of a hospital's routine contact process for organ donation pursuant to subdivision B 4 of § 32.1-127;

21. In the case of substance abuse records, when permitted by and in conformity with requirements of federal law found in 42 U.S.C. § 290dd-2 and 42 C.F.R. Part 2;

22. In connection with the work of any entity established as set forth in § 8.01-581.16 to evaluate the adequacy or quality of professional services or the competency and qualifications for professional staff privileges;

23. If the health records are those of a deceased or mentally incapacitated individual to the personal representative or executor of the deceased individual or the legal guardian or committee of the incompetent or incapacitated individual or if there is no personal representative, executor, legal guardian or committee appointed, to the following persons in the following order of priority: a spouse, an adult son or daughter, either parent, an adult brother or sister, or any other relative of the deceased individual in order of blood relationship;

24. For the purpose of conducting record reviews of inpatient hospital deaths to promote identification of all potential organ, eye, and tissue donors in conformance with the requirements of applicable federal law and regulations, including 42 C.F.R. § 482.45, (i) to the health care provider's designated organ procurement organization certified by the United States Health Care Financing Administration and (ii) to any eye bank or tissue bank in Virginia certified by the Eye Bank Association of America or the American Association of Tissue Banks;

25. To the Office of the Inspector General for Mental Health, Mental Retardation and Substance Abuse Services pursuant to Article 3 (§ 37.2-423 et seq.) of Chapter 4 of Title 37.2;

26. (Expires July 1, 2006) To an entity participating in the activities of a local health partnership authority established pursuant to Article 6.1 (§ 32.1-122.10:001 et seq.) of Chapter 4 of this title, pursuant to subdivision 1 of this subsection;

27. To law-enforcement officials by each licensed emergency medical services agency, (i) when the individual is the victim of a crime or (ii) when the individual has been arrested and has received emergency medical services or has refused emergency medical services and the health records consist of the prehospital patient care report required by § 32.1-116.1;

28. To the State Health Commissioner pursuant to § 32.1-48.015 when such records are those of a person or persons who are subject to an order of quarantine or an order of isolation pursuant to Article 3.02 (§ 32.1-48.05 et seq.) of Chapter 2 of this title; and

29. To the Commissioner of the Department of Labor and Industry or his designee by each licensed emergency medical services agency when the records consist of the prehospital patient care report required by § 32.1-116.1 and the patient has suffered an injury or death on a work site while performing duties or tasks that are within the scope of his employment.

Notwithstanding the provisions of subdivisions 1 through 29 of this subsection, a health care entity shall obtain an individual's written authorization for any disclosure of psychotherapy notes, except when disclosure by the health care entity is (i) for its own training programs in which students, trainees, or practitioners in mental health are being taught under supervision to practice or to improve their skills in group, joint, family, or individual counseling; (ii) to defend itself or its employees or staff against any accusation of wrongful conduct; (iii) in the discharge of the duty, in accordance with subsection B of § 54.1-2400.1, to take precautions to protect third parties from violent behavior or other serious harm; (iv) required in the course of an investigation, audit, review, or proceeding regarding a health care entity's conduct by a duly authorized law-enforcement, licensure, accreditation, or professional review entity; or (v) otherwise required by law.

E. Requests for copies of health records shall (i) be in writing, dated and signed by the requester; (ii) identify the nature of the information requested; and (iii) include evidence of the authority of the requester to receive such copies and identification of the person to whom the information is to be disclosed. The health care entity shall accept a photocopy, facsimile, or other copy of the original signed by the requestor as if it were an original. Within 15 days of receipt of a request for copies of health records, the health care entity shall do one of the following: (i) furnish such copies to any requester authorized to receive them; (ii) inform the requester if the information does not exist or cannot be found; (iii) if the health care entity does not maintain a record of the information, so inform the requester and provide the name and address, if known, of the health care entity who maintains the record; or (iv) deny the request (a) under subsection F, (b) on the grounds that the requester has not established his authority to receive such health records or proof of his identity, or (c) as otherwise provided by law. Procedures set forth in this section shall apply only to requests for health records not specifically governed by other provisions of state law.

F. Except as provided in subsection B of § 8.01-413, copies of an individual's health records shall not be furnished to such individual or anyone authorized to act on the individual's behalf when the individual's treating physician or the individual's treating clinical psychologist has made a part of the individual's record a written statement that, in the exercise of his professional judgment, the furnishing to or review by the individual of such health records would be reasonably likely to endanger the life or physical safety of the individual or another person, or that such health record makes reference to a person other than a health care provider and the access requested would be reasonably likely to cause substantial harm to such referenced person. If any health care entity denies a request for copies of health records based on such statement, the health care entity shall inform

the individual of the individual's right to designate, in writing, at his own expense, another reviewing physician or clinical psychologist, whose licensure, training and experience relative to the individual's condition are at least equivalent to that of the physician or clinical psychologist upon whose opinion the denial is based. The designated reviewing physician or clinical psychologist shall make a judgment as to whether to make the health record available to the individual.

The health care entity denying the request shall also inform the individual of the individual's right to request in writing that such health care entity designate, at its own expense, a physician or clinical psychologist, whose licensure, training, and experience relative to the individual's condition are at least equivalent to that of the physician or clinical psychologist upon whose professional judgment the denial is based and who did not participate in the original decision to deny the health records, who shall make a judgment as to whether to make the health record available to the individual. The health care entity shall comply with the judgment of the reviewing physician or clinical psychologist. The health care entity shall permit copying and examination of the health record by such other physician or clinical psychologist designated by either the individual at his own expense or by the health care entity at its expense.

Any health record copied for review by any such designated physician or clinical psychologist shall be accompanied by a statement from the custodian of the health record that the individual's treating physician or clinical psychologist determined that the individual's review of his health record would be reasonably likely to endanger the life or physical safety of the individual or would be reasonably likely to cause substantial harm to a person referenced in the health record who is not a health care provider.

Further, nothing herein shall be construed as giving, or interpreted to bestow the right to receive copies of, or otherwise obtain access to, psychotherapy notes to any individual or any person authorized to act on his behalf.

G. A written authorization to allow release of an individual's health records shall substantially include the following information:

AUTHORIZATION TO RELEASE CONFIDENTIAL HEALTH RECORDS

```
Individual's Name ..................................................
Health Care Entity's Name ..........................................
Person, Agency, or Health Care Entity to whom disclosure is to
be made ............................................................
Information or Health Records to be disclosed ......................
Purpose of Disclosure or at the Request of the Individual ..........
```

As the person signing this authorization, I understand that I am giving my permission to the above-named health care entity for disclosure of confidential health records. I understand that the health care entity may not condition treatment or payment on my willingness to sign this authorization unless the specific circumstances under which such conditioning is permitted by law are applicable and are set forth in this authorization. I also understand that I have the right to revoke this authorization at any time, but that my revocation is not effective until delivered in writing to the person who is in possession of my health records and is not effective as to health records already disclosed under this authorization. A copy of this authorization and a notation concerning the persons or agencies to whom disclosure was made shall be included with my original health records. I understand that health information disclosed under this authorization might be redisclosed by a recipient and may, as a result of such disclosure, no longer be protected to the same extent as such health information was protected by law while solely in the possession of the health care entity.

```
This authorization expires on (date) or (event) . . . . . .
  Signature of Individual or Individual's Legal Representative if Individual
  is Unable to Sign . . . . . .
  Relationship or Authority of Legal Representative . . . . . .
  Date of Signature . . . . . .
```

H. Pursuant to this subsection:

1. Unless excepted from these provisions in subdivision 9 of this subsection, no party to a civil, criminal or administrative action or proceeding shall request the issuance of a subpoena duces tecum for another party's health records or cause a subpoena duces tecum to be issued by an attorney unless a copy of the request for the subpoena or a copy of the attorney-issued subpoena is provided to the other party's counsel or to the other party if pro se, simultaneously with filing the request or issuance of the subpoena. No party to an action or proceeding shall request or cause the issuance of a subpoena duces tecum for the health records of a nonparty witness unless a copy of the request for the subpoena or a copy of the attorney-issued subpoena is provided to the nonparty witness simultaneously with filing the request or issuance of the attorney-issued subpoena.

No subpoena duces tecum for health records shall set a return date earlier than 15 days from the date of the subpoena except by order of a court or administrative agency for good cause shown. When a court or administrative agency directs that health records be disclosed pursuant to a subpoena duces tecum earlier than 15 days from the date of the subpoena, a copy of the order shall accompany the subpoena.

Any party requesting a subpoena duces tecum for health records or on whose behalf the subpoena duces tecum is being issued shall have the duty to determine whether the individual whose health records are being sought is pro se or a nonparty.

In instances where health records being subpoenaed are those of a pro se party or nonparty witness, the party requesting or issuing the subpoena shall deliver to the pro se party or nonparty witness together with the copy of the request for subpoena, or a copy of the subpoena in the case of an attorney-issued subpoena, a statement informing them of their rights and remedies. The statement shall include the following language and the heading shall be in boldface capital letters:

NOTICE TO INDIVIDUAL

The attached document means that (insert name of party requesting or causing issuance of the subpoena) has either asked the court or administrative agency to issue a subpoena or a subpoena has been issued by the other party's attorney to your doctor, other health care providers (names of health care providers inserted here) or other health care entity (name of health care entity to be inserted here) requiring them to produce your health records. Your doctor, other health care provider or other health care entity is required to respond by providing a copy of your health records. If you believe your health records should not be disclosed and object to their disclosure, you have the right to file a motion with the clerk of the court or the administrative agency to quash the subpoena. If you elect to file a motion to quash, such motion must be filed within 15 days of the date of the request or of the attorney-issued subpoena. You may contact the clerk's office or the administrative agency to determine the requirements that must be satisfied when filing a motion to quash and you may elect to contact an attorney to represent your interest. If you elect to file a motion to quash, you must notify your doctor, other health care provider(s), or other health care entity, that you are filing the motion so that the health care provider or health care entity knows to send the health records to the clerk of court or administrative agency in a sealed envelope or package for safekeeping while your motion is decided.

2. Any party filing a request for a subpoena duces tecum or causing such a subpoena to be issued for an individual's health records shall include a Notice in the same part of the request in which the recipient of the subpoena duces tecum is directed where and when to return the health records. Such notice shall be in boldface capital letters and shall include the following language:

NOTICE TO HEALTH CARE ENTITIES

A COPY OF THIS SUBPOENA DUCES TECUM HAS BEEN PROVIDED TO THE INDIVIDUAL WHOSE HEALTH RECORDS ARE BEING REQUESTED OR HIS COUNSEL. YOU OR THAT INDIVIDUAL HAS THE RIGHT TO FILE A MOTION TO QUASH (OBJECT TO) THE ATTACHED SUBPOENA. IF YOU ELECT TO FILE A MOTION TO QUASH, YOU MUST FILE THE MOTION WITHIN 15 DAYS OF THE DATE OF THIS SUBPOENA.

YOU MUST NOT RESPOND TO THIS SUBPOENA UNTIL YOU HAVE RECEIVED WRITTEN CERTIFICATION FROM THE PARTY ON WHOSE BEHALF THE SUBPOENA WAS ISSUED THAT THE TIME FOR FILING A MOTION TO QUASH HAS ELAPSED AND THAT:

NO MOTION TO QUASH WAS FILED; OR

ANY MOTION TO QUASH HAS BEEN RESOLVED BY THE COURT OR THE ADMINISTRATIVE AGENCY AND THE DISCLOSURES SOUGHT ARE CONSISTENT WITH SUCH RESOLUTION.

IF YOU RECEIVE NOTICE THAT THE INDIVIDUAL WHOSE HEALTH RECORDS ARE BEING REQUESTED HAS FILED A MOTION TO QUASH THIS SUBPOENA, OR IF YOU FILE A MOTION TO QUASH THIS SUBPOENA, YOU MUST SEND THE HEALTH RECORDS ONLY TO THE CLERK OF THE COURT OR ADMINISTRATIVE AGENCY THAT ISSUED THE SUBPOENA OR IN WHICH THE ACTION IS PENDING AS SHOWN ON THE SUBPOENA USING THE FOLLOWING PROCEDURE:

PLACE THE HEALTH RECORDS IN A SEALED ENVELOPE AND ATTACH TO THE SEALED ENVELOPE A COVER LETTER TO THE CLERK OF COURT OR ADMINISTRATIVE AGENCY WHICH STATES THAT CONFIDENTIAL HEALTH RECORDS ARE ENCLOSED AND ARE TO BE HELD UNDER SEAL PENDING A RULING ON THE MOTION TO QUASH THE SUBPOENA. THE SEALED ENVELOPE AND THE COVER LETTER SHALL BE PLACED IN AN OUTER ENVELOPE OR PACKAGE FOR TRANSMITTAL TO THE COURT OR ADMINISTRATIVE AGENCY.

3. Upon receiving a valid subpoena duces tecum for health records, health care entities shall have the duty to respond to the subpoena in accordance with the provisions of subdivisions 4, 5, 6, 7, and 8 of this subsection.

4. Except to deliver to a clerk of the court or administrative agency subpoenaed health records in a sealed envelope as set forth, health care entities shall not respond to a subpoena duces tecum for such health records until they have received a certification as set forth in subdivision 5 or 8 of this subsection from the party on whose behalf the subpoena duces tecum was issued.

If the health care entity has actual receipt of notice that a motion to quash the subpoena has been filed or if the health care entity files a motion to quash the subpoena for health records, then the health care entity shall produce the health records, in a securely sealed envelope, to the clerk of the court or administrative agency issuing the subpoena or in whose court or administrative agency the action is pending. The court or administrative agency shall place the health records under seal until a determination is made regarding the motion to quash. The securely sealed envelope shall only be opened on order of the judge or administrative agency. In the event the court or administrative agency grants the motion to quash, the health records shall be

returned to the health care entity in the same sealed envelope in which they were delivered to the court or administrative agency. In the event that a judge or administrative agency orders the sealed envelope to be opened to review the health records in camera, a copy of the order shall accompany any health records returned to the health care entity. The health records returned to the health care entity shall be in a securely sealed envelope.

5. If no motion to quash is filed within 15 days of the date of the request or of the attorney-issued subpoena, the party on whose behalf the subpoena was issued shall have the duty to certify to the subpoenaed health care entity that the time for filing a motion to quash has elapsed and that no motion to quash was filed. Any health care entity receiving such certification shall have the duty to comply with the subpoena duces tecum by returning the specified health records by either the return date on the subpoena or five days after receipt of the certification, whichever is later.

6. In the event that the individual whose health records are being sought files a motion to quash the subpoena, the court or administrative agency shall decide whether good cause has been shown by the discovering party to compel disclosure of the individual's health records over the individual's objections. In determining whether good cause has been shown, the court or administrative agency shall consider (i) the particular purpose for which the information was collected; (ii) the degree to which the disclosure of the records would embarrass, injure, or invade the privacy of the individual; (iii) the effect of the disclosure on the individual's future health care; (iv) the importance of the information to the lawsuit or proceeding; and (v) any other relevant factor.

7. Concurrent with the court or administrative agency's resolution of a motion to quash, if subpoenaed health records have been submitted by a health care entity to the court or administrative agency in a sealed envelope, the court or administrative agency shall: (i) upon determining that no submitted health records should be disclosed, return all submitted health records to the health care entity in a sealed envelope; (ii) upon determining that all submitted health records should be disclosed, provide all the submitted health records to the party on whose behalf the subpoena was issued; or (iii) upon determining that only a portion of the submitted health records should be disclosed, provide such portion to the party on whose behalf the subpoena was issued and return the remaining health records to the health care entity in a sealed envelope.

8. Following the court or administrative agency's resolution of a motion to quash, the party on whose behalf the subpoena duces tecum was issued shall have the duty to certify in writing to the subpoenaed health care entity a statement of one of the following:

a. All filed motions to quash have been resolved by the court or administrative agency and the disclosures sought in the subpoena duces tecum are consistent with such resolution; and, therefore, the health records previously delivered in a sealed envelope to the clerk of the court or administrative agency will not be returned to the health care entity;

b. All filed motions to quash have been resolved by the court or administrative agency and the disclosures sought in the subpoena duces tecum are consistent with such resolution and that, since no health records have previously been delivered to the court or administrative agency by the health care entity, the health care entity shall comply with the subpoena duces tecum by returning the health records designated in the subpoena by the return date on the subpoena or five days after receipt of certification, whichever is later;

c. All filed motions to quash have been resolved by the court or administrative agency and the disclosures sought in the subpoena duces tecum are not consistent with such resolution; therefore, no health records shall be disclosed and all health records previously delivered in a sealed envelope to the clerk of the court or administrative agency will be returned to the health care entity;

d. All filed motions to quash have been resolved by the court or administrative agency and the disclosures sought in the subpoena duces tecum are not consistent with such resolution and that only limited disclosure has been authorized. The certification shall state that only the portion of the health records as set forth in the certification, consistent with the court or administrative agency's ruling, shall be disclosed. The certification shall also state that health records that were previously delivered to the court or administrative agency for which disclosure has been authorized will not be returned to the health care entity; however, all health records for which disclosure has not been authorized will be returned to the health care entity; or

e. All filed motions to quash have been resolved by the court or administrative agency and the disclosures sought in the subpoena duces tecum are not consistent with such resolution and, since no health records have previously been delivered to the court or administrative agency by the health care entity, the health care entity shall return only those health records specified in the certification, consistent with the court or administrative agency's ruling, by the return date on the subpoena or five days after receipt of the certification, whichever is later.

A copy of the court or administrative agency's ruling shall accompany any certification made pursuant to this subdivision.

9. The provisions of this subsection have no application to subpoenas for health records requested under § 8.01-413, or issued by a duly authorized administrative agency conducting an investigation, audit, review or proceedings regarding a health care entity's conduct.

The provisions of this subsection shall apply to subpoenas for the health records of both minors and adults.

Nothing in this subsection shall have any effect on the existing authority of a court or administrative agency to issue a protective order regarding health records, including, but not limited to, ordering the return of health records to a health care entity, after the period for filing a motion to quash has passed.

A subpoena for substance abuse records must conform to the requirements of federal law found in 42 C.F.R. Part 2, Subpart E.

I. Health care entities may testify about the health records of an individual in compliance with §§ 8.01-399 and 8.01-400.2.

J. If an individual requests a copy of his health record from a health care entity, the health care entity may impose a reasonable cost-based fee, which shall include only the cost of supplies for and labor of copying the requested information, postage when the individual requests that such information be mailed, and preparation of an explanation or summary of such information as agreed to by the individual. For the purposes of this section, "individual" shall subsume a person with authority to act on behalf of the individual who is the subject of the health record in making decisions related to his health care.

(1997, c. 682; 1998, c. 470; 1999, cc. 812, 956, 1010; 2000, cc. 810, 813, 923, 927; 2001, c. 671; 2002, cc. 568, 658, 835, 860; 2003, cc. 471, 907, 983; 2004, cc. 49, 64, 65, 66, 67, 163, 773, 1014, 1021; 2005, cc. 39, 101, 642, 697; 2006, c. 433.)

Commonwealth of Virginia

REGULATIONS
GOVERNING THE PRACTICE OF DENTISTRY AND DENTAL HYGIENE

VIRGINIA BOARD OF DENTISTRY

Title of Regulations: 18 VAC 60-20-10 et seq.

Statutory Authority: § 54.1-2400 and Chapter 27 of Title 54.1 of the *Code of Virginia*

Revised Date: May 3, 2006

(804) 662-9906 (TEL)
(804) 662-7246 (FAX)
email: denltc@dhp.virginia.gov

TABLE OF CONTENTS

Part I. General Provisions.

18VAC60-20-10. Definitions.

The following words and terms when used in this chapter shall have the following meanings unless the context clearly indicates otherwise:

"ADA" means the American Dental Association.

"Advertising" means a representation or other notice given to the public or members thereof, directly or indirectly, by a dentist on behalf of himself, his facility, his partner or associate, or any dentist affiliated with the dentist or his facility by any means or method for the purpose of inducing purchase, sale or use of dental methods, services, treatments, operations, procedures or products, or to promote continued or increased use of such dental methods, treatments, operations, procedures or products.

"Analgesia" means the diminution or elimination of pain in the conscious patient.

"Anxiolysis" means the diminution or elimination of anxiety through the use of pharmacological agents in a dosage that does not cause depression of consciousness.

"Approved schools" means those dental or dental hygiene programs currently accredited by the Commission on Dental Accreditation of the American Dental Association.

"Conscious sedation" means a minimally depressed level of consciousness that retains the patient's ability to independently and continuously maintain an airway and respond appropriately to physical stimulation and verbal commands, produced by pharmacological or nonpharmacological methods, including inhalation, parenteral, transdermal or enteral, or a combination thereof.

"Deep sedation/general anesthesia" means an induced state of depressed consciousness or unconsciousness accompanied by a complete or partial loss of protective reflexes, including the inability to continually maintain an airway independently and/or respond purposefully to physical stimulation or verbal command and is produced by a pharmacological or nonpharmacological method or a combination thereof.

"Dental assistant" means any unlicensed person under the supervision of a dentist who renders assistance for services provided to the patient as authorized under this chapter but shall not include an individual serving in purely a secretarial or clerical capacity.

"Direction" means the dentist evaluates the patient and is present for observation, advice, and control over the performance of dental services.

"Enteral" is any technique of administration in which the agent is absorbed through the gastrointestinal tract or oral mucosa (i.e., oral, rectal, sublingual).

"General supervision" means that the dentist has evaluated the patient and issued a written order for the specific, authorized services to be provided by a dental hygienist when the dentist is not present in the facility while the services are being provided.

"Inhalation" is a technique of administration in which a gaseous or volatile agent, including nitrous oxide, is introduced into the pulmonary tree and whose primary effect is due to absorption through the pulmonary bed.

"Inhalation analgesia" means the inhalation of nitrous oxide and oxygen to produce a state of reduced sensibility to pain without the loss of consciousness.

"Local anesthesia" means the loss of sensation or pain in the oral cavity or the maxillofacial or adjacent and associated structures generally produced by a topically applied or injected agent without depressing the level of consciousness.

"Parenteral" means a technique of administration in which the drug bypasses the gastrointestinal tract (i.e., intramuscular, intravenous, intranasal, submucosal, subcutaneous, or intraocular).

"Radiographs" means intraoral and extraoral x-rays of hard and soft tissues to be used for purposes of diagnosis.

18VAC60-20-15. Recordkeeping.

A dentist shall maintain patient records for not less than three years from the most recent date of service for purposes of review by the board to include the following:

1. Patient's name and date of treatment;

2. Updated health history;

3. Diagnosis and treatment rendered;

4. List of drugs prescribed, administered, dispensed and the quantity;

5. Radiographs;

6. Patient financial records;

7. Name of dentist and dental hygienist providing service; and

8. Laboratory work orders which meet the requirements of §54.1-2719 of the Code of Virginia.

18VAC60-20-16. Address of record.

At all times, each licensed dentist shall provide the board with a current, primary business address, and each dental hygienist shall provide a current mailing address. All required notices mailed by the board to any such licensee shall be validly given when mailed to the latest address given by the licensee. All changes of address shall be furnished to the board in writing within 30 days of such changes.

18VAC60-20-17. Criteria for delegation of informal fact-finding proceedings to an agency subordinate.

A. Decision to delegate.

In accordance with § 54.1-2400 (10) of the Code of Virginia, the board may delegate an informal fact-finding proceeding to an agency subordinate upon determination that probable cause exists that a practitioner may be subject to a disciplinary action.

B. Criteria for delegation. Cases that may not be delegated to an agency subordinate, except as may be approved by a committee of the board, include the following:

1. Intentional or negligent conduct that causes serious injury to a patient;

2. Impairment with an inability to practice with skill and safety;

3. Sexual misconduct;

4. Indiscriminate prescribing or dispensing;

5. Medication error in administration or dispensing;

6. Unauthorized practice.

C. Criteria for an agency subordinate.

1. An agency subordinate authorized by the board to conduct an informal fact-finding proceeding may include current or past board members and professional staff or other persons deemed knowledgeable by virtue of their training and experience in administrative proceedings involving the regulation and discipline of health professionals.

2. The executive director shall maintain a list of appropriately qualified persons to whom an informal fact-finding proceeding may be delegated.

3. The board may delegate to the executive director the selection of the agency subordinate who is deemed appropriately qualified to conduct a proceeding based on the qualifications of the subordinate and the type of case being heard.

Part II. Licensure Renewal and Fees.

18VAC60-20-20. License renewal and reinstatement.

A. Renewal fees. Every person holding an active or inactive license, a full-time faculty license, or a restricted volunteer license to practice dentistry or dental hygiene shall, on or before March 31, renew his license. Every person holding a teacher's license, temporary resident's license or a temporary permit to practice dentistry or dental hygiene shall, on or before June 30, renew his license.

1. The fee for renewal of an active license or permit to practice or teach dentistry shall be $150, and the fee for renewal of an active license or permit to practice or teach dental hygiene shall be $50.

2. The fee for renewal of an inactive license shall be $75 for dentists and $25 for dental hygienists.

3. The fee for renewal of a restricted volunteer license shall be $15.

4. The application fee for a temporary resident's license shall be $55. The annual renewal fee shall be $35 a year. An additional fee for late renewal of licensure shall be $15.

B. Late fees. Any person who does not return the completed form and fee by the deadline required in subsection A of this section shall be required to pay an additional late fee of $50 for dentists and $20 for dental hygienists. The board shall renew a license if the renewal form, renewal fee, and late fee are received within one year of the deadline required in subsection A of this section.

C. Reinstatement fees and procedures. The license of any person who does not return the completed renewal form and fees by the deadline required in subsection A of this section shall automatically expire and become invalid and his practice of dentistry/dental hygiene shall be illegal.

1. Any person whose license has expired for more than one year and who wishes to reinstate such license shall submit to the board a reinstatement application, the renewal fee and the reinstatement fee of $225 for dentists and $135 for dental hygienists.

2. Practicing in Virginia with an expired license may subject the licensee to disciplinary action and additional fines by the board.

3. The executive director may reinstate such expired license provided that the applicant can demonstrate continuing competence, that no grounds exist pursuant to § 54.1-2706 of the Code of Virginia and 18 VAC 60-20-170 to deny said reinstatement, and that the applicant has paid the unpaid renewal fee, the reinstatement fee and any fines or assessments. Evidence of continuing competence shall include hours of continuing education as required by subsection H of 18 VAC 60-20-50 and may also include evidence of active practice in another state or in federal service or current specialty board certification.

D. Reinstatement of a license previously revoked or indefinitely suspended. Any person whose license has been revoked shall submit to the board for its approval a reinstatement application and fee of $750 for dentists and $500 for dental hygienists. Any person whose license has been indefinitely suspended shall submit to the board for its approval a reinstatement application and fee of $350 for dentists and $250 for dental hygienists.

18VAC60-20-30. Other fees.

A. Dental licensure application fees. The application fee for a dental license, a license to teach dentistry, a full-time faculty license, or a temporary permit as a dentist shall be $225.

B. Dental hygiene licensure application fees. The application fee for a dental hygiene license by examination, a license to teach dental hygiene, or a temporary permit as a dental hygienist shall be $135.

C. Duplicate wall certificate. Licensees desiring a duplicate wall certificate shall submit a request in writing stating the necessity for such duplicate wall certificate, accompanied by a fee of $25.

D. Duplicate license. Licensees desiring a duplicate license shall submit a request in writing stating the necessity for such duplicate license, accompanied by a fee of $10. If a licensee maintains more than one office, a notarized photocopy of a license may be used.

E. Licensure certification. Licensees requesting endorsement or certification by this board shall pay a fee of $25 for each endorsement or certification.

F. Restricted license. Restricted license issued in accordance with §54.1-2714 of the Code of Virginia shall be at a fee of $150.

G. Endorsement license. License by endorsement issued in accordance with 18VAC60-20-80 for dental hygienists shall be at a fee of $135.

H. Restricted volunteer license. The application fee for licensure as a restricted volunteer dentist or dental hygienist issued in accordance with §54.1-2712.1 or §54.1-2726.1 of the Code of Virginia shall be $25.

I. Returned check. The fee for a returned check shall be $35.

18VAC60-20-40. Refunds.

No fee will be refunded or applied for any purpose other than the purpose for which the fee is submitted.

18VAC60-20-50. Requirements for continuing education.

A. After April 1, 1995, a dentist or a dental hygienist shall be required to have completed a minimum of 15 hours of approved continuing education for each annual renewal of licensure.

1. Effective June 29, 2006, a dentist or a dental hygienist shall be required to maintain evidence of successful completion of training in basic cardiopulmonary resuscitation.

2. Effective June 29, 2006, a dentist who administers or a dental hygienist who monitors patients under general anesthesia, deep sedation or conscious sedation shall complete four hours every two years of approved continuing education directly related to administration or monitoring of such anesthesia or sedation as part of the hours required for licensure renewal.

3. Continuing education hours in excess of the number required for renewal may be transferred or credited to the next renewal year for a total of not more than 15 hours.

B. An approved continuing dental education program shall be relevant to the treatment and care of patients and shall be:

1. Clinical courses in dentistry and dental hygiene; or

2. Nonclinical subjects that relate to the skills necessary to provide dental or dental hygiene services and are supportive of clinical services (i.e., patient management, legal and ethical responsibilities, stress management). Courses not acceptable for the purpose of this subsection include, but are not limited to, estate planning, financial planning, investments, and personal health.

C. Continuing education credit may be earned for verifiable attendance at or participation in any courses, to include audio and video presentations, which meet the requirements in subsection B of this section and which are given by one of the following sponsors:

1. American Dental Association and National Dental Association, their constituent and component/branch associations;

2. American Dental Hygienists' Association and National Dental Hygienists Association, their constituent and component/branch associations;

3. American Dental Assisting Association, its constituent and component/branch associations;

4. American Dental Association specialty organizations, their constituent and component/branch associations;

5. American Medical Association and National Medical Association, their specialty organizations, constituent, and component/branch associations;

6. Academy of General Dentistry, its constituent and component/branch associations;

7. Community colleges with an accredited dental hygiene program if offered under the auspices of the dental hygienist program;

8. A college or university that is accredited by an accrediting agency approved by the U.S. Department of Education or a hospital or health care institution accredited by the Joint Commission on Accreditation of Health Care Organizations;

9. The American Heart Association, the American Red Cross, the American Safety and Health Institute and the American Cancer Society;

10. A medical school which is accredited by the American Medical Association's Liaison Committee for Medical Education or a dental school or dental specialty residency program accredited by the Commission on Dental Accreditation of the American Dental Association;

11. State or federal government agencies (i.e., military dental division, Veteran's Administration, etc.);

12. The Commonwealth Dental Hygienists' Society;

13. The MCV Orthodontic and Research Foundation;

14. The Dental Assisting National Board; or

15. A regional testing agency (i.e., Central Regional Dental Testing Service, Northeast Regional Board of Dental Examiners, Southern Regional Testing Agency, or Western Regional Examining Board) when serving as an examiner.

D. A licensee is exempt from completing continuing education requirements and considered in compliance on the first renewal date following the licensee's initial licensure.

E. The board may grant an exemption for all or part of the continuing education requirements due to circumstances beyond the control of the licensee, such as temporary disability, mandatory military service, or officially declared disasters.

F. A licensee is required to provide information on compliance with continuing education requirements in his annual license renewal. Following the renewal period, the board may conduct an audit of licensees to verify compliance. Licensees selected for audit must provide original documents certifying that they have fulfilled their continuing education requirements by the deadline date as specified by the board.

G. All licensees are required to maintain original documents verifying the date and subject of the program or activity. Documentation must be maintained for a period of four years following renewal.

H. A licensee who has allowed his license to lapse, or who has had his license suspended or revoked, must submit evidence of completion of continuing education equal to the requirements for the number of years in which his license has not been active, not to exceed a total of 45 hours. Of the required hours, at least 15 must be earned in the most recent 12 months and the remainder within the 36 months preceding an application for reinstatement.

I. Continuing education hours required by board order shall not be used to satisfy the continuing education requirement for license renewal or reinstatement.

J. Failure to comply with continuing education requirements may subject the licensee to disciplinary action by the board.

Part III. Entry and Licensure Requirements.

18VAC60-20-60. Education.

A. Dental licensure. An applicant for dental licensure shall be a graduate and a holder of a diploma or a certificate from a dental program accredited by the Commission on Dental Accreditation of the American Dental Association, which consists of either a pre-doctoral dental education program or at least a 12-month post-doctoral advanced general dentistry program or a post-doctoral dental education program in any other specialty.

B. Dental hygiene licensure. An applicant for dental hygiene licensure shall have graduated from or have been issued a certificate by a program of dental hygiene accredited by the Commission on Dental Accreditation of the American Dental Association.

18VAC60-20-70. Licensure examinations.

A. Dental examinations.

1. All applicants shall have successfully completed Part I and Part II of the examinations of the Joint Commission on National Dental Examinations prior to making application to this board.

2. All applicants to practice dentistry shall satisfactorily pass the complete board-approved examinations in dentistry. Applicants who successfully completed the board-approved examinations five or more years prior to the date of receipt of their applications for licensure by this board may be required to retake the examinations or take board-approved continuing education unless they demonstrate that they have maintained clinical, ethical and legal practice for 48 of the past 60 months immediately prior to submission of an application for licensure.

3. If the candidate has failed any section of a board-approved examination three times, the candidate shall complete a minimum of 14 hours of additional clinical training in each section of the examination to be retested in order to be approved by the board to sit for the examination a fourth time.

B. Dental hygiene examinations.

1. All applicants are required to successfully complete the dental hygiene examination of the Joint Commission on National Dental Examinations prior to making application to this board for licensure.

2. All applicants to practice dental hygiene shall successfully complete the board-approved examinations in dental hygiene, except those persons eligible for licensure pursuant to 18 VAC 60-20-80.

3. If the candidate has failed any section of a board-approved examination three times, the candidate shall complete a minimum of seven hours of additional clinical training in each section of the examination to be retested in order to be approved by the board to sit for the examination a fourth time.

C. All applicants who successfully complete the board-approved examinations five or more years prior to the date of receipt of their applications for licensure by this board may be required to retake the board-approved examinations or take board-approved continuing education unless they demonstrate that they have maintained clinical, ethical, and legal practice for 48 of the past 60 months immediately prior to submission of an application for licensure.

D. All applicants for licensure by examination shall be required to attest that they have read and understand and will remain current with the applicable Virginia dental and dental hygiene laws and the regulations of this board.

18VAC60-20-80. Licensure by endorsement for dental hygienists.

An applicant for dental hygiene endorsement licensure shall:

1. Be a graduate or be issued a certificate from an accredited dental hygiene school/program of dental hygiene recognized by the Commission on Dental Accreditation of the American Dental Association;

2. Be currently licensed to practice dental hygiene in another state, territory, District of Columbia, or possession of the United States, and have clinical, ethical, and legal practice for 24 out of the past 48 months immediately preceding application for licensure;

3. Be certified to be in good standing from each state in which he is currently licensed or has ever held a license;

4. Have successfully completed a clinical licensing examination substantially equivalent to that required by Virginia;

5. Not have failed the clinical examination accepted by the board within the last five years;

6. Be of good moral character;

7. Not have committed any act which would constitute a violation of § 54.1-2706 of the Code of Virginia;

8. Have successfully completed the dental hygiene examination of the Joint Commission on National Dental Examinations prior to making application to this board; and

9. Attest to having read and understand and to remain current with the laws and the regulations governing the practice of dentistry and dental hygiene in Virginia.

18VAC60-20-90. Temporary permit, teacher's license, and full-time faculty license.

A. A temporary permit shall be issued only for the purpose of allowing dental and dental hygiene practice as limited by §§ 54.1-2715 and 54.1-2726 of the Code of Virginia.

B. A temporary permit will not be renewed unless the permittee shows that extraordinary circumstances prevented the permittee from taking the licensure examination during the term of the temporary permit.

C. A full-time faculty license shall be issued to any dentist who meets the entry requirements of § 54.1-2713 of the Code of Virginia, who is certified by the dean of a dental school in the Commonwealth and who is serving full time on the faculty of a dental school or its affiliated clinics intramurally in the Commonwealth.

1. A full-time faculty license shall remain valid only while the license holder is serving full time on the faculty of a dental school in the Commonwealth. When any such license holder ceases to continue serving full time on the faculty of the dental school for which the license was issued, the licensee shall surrender the license, which shall be null and void upon termination of full-time employment. The dean of the dental school shall notify the board within five working days of such termination of full-time employment.

2. A full-time faculty licensee working in a faculty intramural clinic affiliated with a dental school may accept a fee for service.

D. A temporary permit, a teacher's license and a full-time faculty license may be revoked for any grounds for which the license of a regularly licensed dentist or dental hygienist may be revoked and for any act indicating the inability of the permittee or licensee to practice dentistry that is consistent with the protection of the public health and safety as determined by the generally accepted standards of dental practice in Virginia.

E. Applicants for a full-time faculty license or temporary permit shall be required to attest to having read and understand and to remaining current with the laws and the regulations governing the practice of dentistry in Virginia.

18VAC60-20-91. Temporary licenses to persons enrolled in advanced dental education programs.

A. A dental intern, resident or post-doctoral certificate or degree candidate applying for a temporary license to practice in Virginia shall:

1. Successfully complete a D.D.S. or D.M.D. dental degree program required for admission to board-approved examinations and submit a letter of confirmation from the registrar of the school or college conferring the professional degree, or official transcripts confirming the professional degree and date the degree was received.

2. Submit a recommendation from the dean of the dental school or the director of the accredited graduate program specifying the applicant’s acceptance as an intern, resident or post-doctoral certificate or degree candidate in an advanced dental education program. The beginning and ending dates of the internship, residency or post-doctoral program shall be specified.

B. The temporary license applies only to practice in the hospital or outpatient clinics of the hospital or dental school where the internship, residency or post-doctoral time is served. Outpatient clinics in a hospital or other facility must be a recognized part of an advanced dental education program.

C. The temporary license may be renewed annually, for up to five times, upon the recommendation of the dean of the dental school or director of the accredited graduate program.

D. The temporary license holder shall be responsible and accountable at all times to a licensed dentist, who is a member of the staff where the internship, residency or post-doctoral candidacy is served. The temporary

licensee is prohibited from employment outside of the advanced dental education program where a full license is required.

E. The temporary license holder shall abide by the accrediting requirements for an advanced dental education program as approved by the Commission on Dental Accreditation of the American Dental Association.

18VAC60-20-100. Other application requirements.

All applications for any license or permit issued by the board shall include:

1. A final certified transcript of the grades from the college from which the applicant received the dental degree, dental hygiene degree or certificate, or post-doctoral degree or certificate;

2. An original grade card issued by the Joint Commission on National Dental Examinations; and

3. A current report from the Healthcare Integrity and Protection Data Bank (HIPDB).

18VAC60-20-105. Inactive license.

A. Any dentist or dental hygienist who holds a current, unrestricted license in Virginia may, upon a request on the renewal application and submission of the required fee, be issued an inactive license. The holder of an inactive license shall not be entitled to perform any act requiring a license to practice dentistry or dental hygiene in Virginia.

B. An inactive license may be reactivated upon submission of the required application, payment of the current renewal fee, and documentation of having completed continuing education hours equal to the requirement for the number of years in which the license has been inactive, not to exceed a total of 45 hours. Of the required hours, at least 15 must be earned in the most recent 12 months and the remainder within the 36 months immediately preceding the application for activation. The board reserves the right to deny a request for reactivation to any licensee who has been determined to have committed an act in violation of § 54.1-2706 of the Code of Virginia.

18VAC60-20-106. Registration for voluntary practice by out-of-state licensees.

Any dentist or dental hygienist who does not hold a license to practice in Virginia and who seeks registration to practice on a voluntary basis under the auspices of a publicly supported, all volunteer, nonprofit organization that sponsors the provision of health care to populations of underserved people shall:

1. File a complete application for registration on a form provided by the board at least 15 days prior to engaging in such practice;

2. Provide a complete record of professional licensure in each state in which he has held a license and a copy of any current license;

3. Provide the name of the nonprofit organization, the dates and location of the voluntary provision of services;

4. Pay a registration fee of $10; and

5. Provide a notarized statement from a representative of the nonprofit organization attesting to its compliance with provisions of subdivision 5 of §54.1-2701 of the Code of Virginia.

Part IV. Anesthesia, Sedation and Analgesia.

18 VAC 60-20-107. General provisions.

A. This part (18 VAC 60-20-107 et seq.) shall not apply to:

1. The administration of local anesthesia in dental offices; or

2. The administration of anesthesia in (i) a licensed hospital as defined in § 32.1-123 of the Code of Virginia or state-operated hospitals or (ii) a facility directly maintained or operated by the federal government.

B. Appropriateness of administration of general anesthesia or sedation in a dental office.

1. Anesthesia and sedation may be provided in a dental office for patients who are Class I and II as classified by the American Society of Anesthesiologists (ASA).

2. Conscious sedation, deep sedation or general anesthesia shall not be provided in a dental office for patients in ASA risk categories of Class IV and V.

3. Patients in ASA risk category Class III shall only be provided general anesthesia or sedation by:

a. A dentist after consultation with their primary care physician or other medical specialist regarding potential risk and special monitoring requirements that may be necessary; or

b. An oral and maxillofacial surgeon after performing an evaluation and documenting the ASA risk assessment category of the patient and any special monitoring requirements that may be necessary.

C. Prior to administration of sedation or general anesthesia, the dentist shall discuss the nature and objectives of the anesthesia or sedation planned along with the risks, benefits and alternatives and shall obtain informed, written consent from the patient or other responsible party.

D. The determinant for the application of these rules shall be the degree of sedation or consciousness level of a patient that should reasonably be expected to result from the type and dosage of medication, the method of administration and the individual characteristics of the patient as documented in the patient's record.

E. A dentist who is administering anesthesia or sedation to patients prior to June 29, 2005 shall have one year from that date to comply with the educational requirements set forth in this chapter for the administration of anesthesia or sedation.

18 VAC60-20-108. Administration of anxiolysis or inhalation analgesia.

A. Education and training requirements. A dentist who utilizes anxiolysis or inhalation analgesia shall have training in and knowledge of:

1. Medications used, the appropriate dosages and the potential complications of administration.

2. Physiological effects of nitrous oxide and potential complications of administration.

B. Equipment requirements. A dentist who utilizes anxiolysis or inhalation analgesia shall maintain the following equipment in his office and be trained in its use:

1. Blood pressure monitoring equipment.

2. Positive pressure oxygen.

3. Mechanical (hand) respiratory bag.

C. Monitoring requirements.

1. The treatment team for anxiolysis or inhalation analgesia shall consist of the dentist and a second person in the operatory with the patient to assist, monitor and observe the patient. One member of the team shall be in the operatory monitoring the patient at all times once the administration has begun.

2. A dentist who utilizes anxiolysis or inhalation analgesia shall ensure that there is continuous visual monitoring of the patient to determine the level of consciousness.

3. If inhalation analgesia is used, monitoring shall include making the proper adjustments of nitrous oxide machines at the request of the dentist during administration of the sedation and observing the patient's vital signs.

D. Discharge requirement. The dentist shall ensure that the patient is not discharged to his own care until he exhibits normal responses.

18VAC60-20-110. Requirements to administer deep sedation/general anesthesia.

A. Educational requirements. A dentist may employ or use deep sedation/general anesthesia on an outpatient basis by meeting one of the following educational criteria and by posting the educational certificate, in plain view of the patient, which verifies completion of the advanced training as required in subdivision 1 or 2 of this subsection. These requirements shall not apply nor interfere with requirements for obtaining hospital staff privileges.

1. Has completed a minimum of one calendar year of advanced training in anesthesiology and related academic subjects beyond the undergraduate dental school level in a training program in conformity with published guidelines by the American Dental Association (Guidelines for Teaching the Comprehensive Control of Anxiety and Pain in Dentistry) in effect at the time the training occurred; or

2. Completion of an American Dental Association approved residency in any dental specialty which incorporates into its curriculum a minimum of one calendar year of full-time training in clinical anesthesia and related clinical medical subjects (i.e. medical evaluation and management of patients), comparable to those set forth in published guidelines by the American Dental Association for Graduate and Postgraduate Training in Anesthesia in effect at the time the training occurred.

After June 29, 2006, dentists who administer deep sedation/general anesthesia shall hold current certification in advanced resuscitative techniques, such as courses in Advanced Cardiac Life Support or Pediatric Advanced Life Support and current Drug Enforcement Administration registration.

B. Exceptions.

1. A dentist who has not met the requirements specified in subsection A of this section may treat patients under deep sedation/general anesthesia in his practice if a qualified anesthesiologist or a dentist who fulfills the requirements specified in subsection A of this section, is present and is responsible for the administration of the anesthetic.

2. If a dentist fulfills the requirements specified in subsection A of this section, he may employ the services of a certified nurse anesthetist.

C. Posting. Any dentist who utilizes deep sedation/general anesthesia shall post with the dental license and current registration with the Drug Enforcement Administration, the certificate of education required under subsection A of this section.

D. Emergency equipment and techniques. A dentist who administers deep sedation/general anesthesia shall be proficient in handling emergencies and complications related to pain control procedures, including the maintenance of respiration and circulation, immediate establishment of an airway and cardiopulmonary resuscitation, and shall maintain the following emergency equipment in the dental facility:

1. Full face mask for children or adults, as appropriate for the patient being treated;

2. Oral and nasopharyngeal airways;

3. Endotracheal tubes for children or adults, or both, with appropriate connectors;

4. A laryngoscope with reserve batteries and bulbs and appropriately sized laryngoscope blades for children or adults, or both;

5. Source of delivery of oxygen under controlled positive pressure;

6. Mechanical (hand) respiratory bag;

7. Pulse oximetry and blood pressure monitoring equipment available and used in the treatment room;

8. Appropriate emergency drugs for patient resuscitation;

9. EKG monitoring equipment and temperature measuring devices;

10. Pharmacologic antagonist agents;

11. External defibrillator (manual or automatic); and

12. For intubated patients, an End-Tidal CO^2 monitor.

E. Monitoring requirements.

1. The treatment team for deep sedation/general anesthesia shall consist of the operating dentist, a second person to monitor and observe the patient and a third person to assist the operating dentist, all of whom shall be in the operatory with the patient during the dental procedure.

2. Monitoring of the patient under deep sedation/general anesthesia, including direct, visual observation of the patient by a member of the team, is to begin prior to induction of anesthesia and shall take place continuously during the dental procedure and recovery from anesthesia. The person who administered the anesthesia or another licensed practitioner qualified to administer the same level of anesthesia must remain on the premises of the dental facility until the patient has regained consciousness and is discharged.

3. Monitoring deep sedation/general anesthesia shall include the following: recording and reporting of blood pressure, pulse, respiration and other vital signs to the attending dentist.

18VAC60-20-120. Requirements to administer conscious sedation.

A. Automatic qualification. Dentists qualified to administer deep sedation/general anesthesia may administer conscious sedation.

B. Educational requirements for administration of conscious sedation by any method.

1. A dentist may employ or use any method of conscious sedation by meeting one of the following criteria:

a. Completion of training for this treatment modality according to guidelines published by the American Dental Association (Guidelines for Teaching the Comprehensive Control of Anxiety and Pain in Dentistry) in effect at the time the training occurred, while enrolled at an accredited dental program or while enrolled in a post-doctoral university or teaching hospital program; or

b. Completion of an approved continuing education course consisting of 60 hours of didactic instruction plus the management of at least 20 patients per participant, demonstrating competency and clinical experience in parenteral conscious sedation and management of a compromised airway. The course content shall be consistent with guidelines published by the American Dental Association (Guidelines for Teaching the Comprehensive Control of Anxiety and Pain in Dentistry) in effect at the time the training occurred.

2. A dentist who was self-certified in anesthesia and conscious sedation prior to January 1989 may continue to administer only conscious sedation.

C. Educational requirement for enteral administration of conscious sedation only. A dentist may administer conscious sedation by an enteral method if he has completed an approved continuing education program of not less than 18 hours of didactic instruction plus 20 clinically-oriented experiences in enteral and/or combination inhalation-enteral conscious sedation techniques. The course content shall be consistent with the guidelines published by the American Dental Association (Guidelines for Teaching the Comprehensive Control of Anxiety and Pain in Dentistry) in effect at the time the training occurred.

D. Additional training required. After June 29, 2006, dentists who administer conscious sedation shall hold current certification in advanced resuscitation techniques, such as Advanced Cardiac Life Support as evidenced by a certificate of completion posted with the dental license, and current registration with the Drug Enforcement Administration.

E. Emergency equipment and techniques. A dentist who administers conscious sedation shall be proficient in handling emergencies and complications related to pain control procedures, including the maintenance of respiration and circulation, immediate establishment of an airway and cardiopulmonary resuscitation, and shall maintain the following emergency airway equipment in the dental facility:

1. Full face mask for children or adults, as appropriate for the patient being treated;

2. Oral and nasopharyngeal airways;

3. Endotracheal tubes for children or adults, or both, with appropriate connectors and a laryngoscope with reserve batteries and bulbs and appropriately sized laryngoscope blades for children or adults, or both. In lieu of a laryngoscope and endotracheal tubes, a dentist may maintain airway adjuncts designed for the maintenance of a patent airway and the direct delivery of positive pressure oxygen;

4. Pulse oximetry;

5. Blood pressure monitoring equipment;

6. Pharmacologic antagonist agents;

7. Source of delivery of oxygen under controlled positive pressure;

8. Mechanical (hand) respiratory bag; and

9. Appropriate emergency drugs for patient resuscitation.

F. Monitoring requirements.

1. The administration team for conscious sedation shall consist of the operating dentist and a second person to assist, monitor and observe the patient.

2. Monitoring of the patient under conscious sedation, including direct, visual observation of the patient by a member of the team, is to begin prior to administration of sedation, or if medication is self-administered by the patient, when the patient arrives at the dental office and shall take place continuously during the dental procedure and recovery from sedation. The person who administers the sedation or another licensed practitioner qualified to administer the same level of sedation must remain on the premises of the dental facility until the patient is responsive and is discharged.

18VAC60-20-130. (Repealed.).

18VAC60-20-135. Ancillary personnel.

After June 29, 2006, dentists who employ ancillary personnel to assist in the administration and monitoring of any form of conscious sedation or deep sedation/general anesthesia shall maintain documentation that such personnel have:

1. Minimal training resulting in current certification in basic resuscitation techniques, such as Basic Cardiac Life Support or an approved, clinically oriented course devoted primarily to responding to clinical emergencies offered by an approved provider of continuing education as set forth in 18 VAC 60-20-50 C; or

2. Current certification as a certified anesthesia assistant (CAA) by the American Association of Oral and Maxillofacial Surgeons or the American Dental Society of Anesthesiology (ADSA).

18VAC60-20-140. Report of adverse reactions.

A written report shall be submitted to the board by the treating dentist within 30 days following any mortality or morbidity which directly results from the administration of local anesthesia, general anesthesia, conscious sedation, or nitrous oxide oxygen inhalation analgesia and which occurs in the facility or during the first 24 hours immediately following the patient's departure from the facility.

Part V. Unprofessional Conduct.

18VAC60-20-150 to 18VAC60-20-160. [Repealed]

18VAC60-20-170. Acts constituting unprofessional conduct.

The following practices shall constitute unprofessional conduct within the meaning of §54.1-2706 of the Code of Virginia:

1. Fraudulently obtaining, attempting to obtain or cooperating with others in obtaining payment for services;

2. Performing services for a patient under terms or conditions which are unconscionable. The board shall not consider terms unconscionable where there has been a full and fair disclosure of all terms and where the patient entered the agreement without fraud or duress;

3. Misrepresenting to a patient and the public the materials or methods and techniques the licensee uses or intends to use;

4. Committing any act in violation of the Code of Virginia reasonably related to the practice of dentistry and dental hygiene;

5. Delegating any service or operation which requires the professional competence of a dentist or dental hygienist to any person who is not a dentist or dental hygienist as authorized by this chapter;

6. Certifying completion of a dental procedure that has not actually been completed;

7. Knowingly or negligently violating any applicable statute or regulation governing ionizing radiation in the Commonwealth of Virginia, including, but not limited to, current regulations promulgated by the Virginia Department of Health; and

8. Permitting or condoning the placement or exposure of dental x-ray film by an unlicensed person, except where the unlicensed person has complied with 18VAC60-20-195.

18VAC60-20-180. Advertising.

A. Practice limitation. A general dentist who limits his practice shall state in conjunction with his name that he is a general dentist providing only certain services, e.g., orthodontic services.

B. Fee disclosures. Any statement specifying a fee for a dental service which does not include the cost of all related procedures, services, and products which, to a substantial likelihood, will be necessary for the completion of the advertised services as it would be understood by an ordinarily prudent person shall be deemed to be deceptive or misleading. Where reasonable disclosure of all relevant variables and considerations is made, a statement of a range of fees for specifically described dental services shall not be deemed to be deceptive or misleading.

C. Discounts. Discount offers for a dental service are permissible for advertising only when the nondiscounted or full fee and the final discounted fee are also disclosed in the advertisement. The dentist shall maintain documented evidence to substantiate the discounted fee.

D. Retention of broadcast advertising. A prerecorded copy of all advertisements on radio or television shall be retained for a six-month period following the final appearance of the advertisement. The advertising dentist is responsible for making prerecorded copies of the advertisement available to the board within five days following a request by the board.

E. Routine dental services. Advertising of fees pursuant to subdivision F 3 of this section is limited to procedures which are determined by the board to be routine dental services as set forth in the American Dental Association's "Code on Dental Procedures and Nomenclature," as published in Current Dental Terminology (Second Edition, 1995-2000), which is hereby adopted and incorporated by reference.

F. The following practices shall constitute false, deceptive, or misleading advertising within the meaning of §54.1-2706 (7) of the Code of Virginia:

1. Publishing an advertisement which contains a material misrepresentation or omission of facts;

2. Publishing an advertisement which contains a representation or implication that is likely to cause an ordinarily prudent person to misunderstand or be deceived, or that fails to contain reasonable warnings or disclaimers necessary to make a representation or implication not deceptive;

3. Publishing an advertisement which fails to include the information and disclaimers required by this section;

4. Publishing an advertisement which contains a claim of professional superiority, claims to be a specialist, or uses any of the terms to designate a dental specialty unless he is entitled to such specialty designation under the guidelines or requirements for specialties approved by the American Dental Association (Requirements for Recognition of Dental Specialties and National Certifying Boards for Dental Specialists, October 1995), or such guidelines or requirements as subsequently amended and approved by the dental disciplinary board, or other such organization recognized by the board; and

5. A dentist not currently entitled to such specialty designation shall not represent that his practice is limited to providing services in a specialty area without clearly disclosing in the representation that he is a general dentist. A specialist who represents services in areas other than his specialty is considered to be practicing general dentistry.

G. Signage. Advertisements, including but not limited to signage, containing descriptions of the type of dentistry practiced or a specific geographic locator are permissible so long as the requirements of §§54.1-2718 and 54.1-2720 of the Code of Virginia are complied with.

Part VI. Direction and Delegation Of Duties.

18VAC60-20-190. Nondelegable duties; dentists.

Only licensed dentists shall perform the following duties:

1. Final diagnosis and treatment planning;

2. Performing surgical or cutting procedures on hard or soft tissue;

3. Prescribing or parenterally administering drugs or medicaments;

4. Authorization of work orders for any appliance or prosthetic device or restoration to be inserted into a patient's mouth;

5. Operation of high speed rotary instruments in the mouth;

6. Performing pulp capping procedures;

7. Administering and monitoring general anesthetics and conscious sedation except as provided for in § 54.1-2701 of the Code of Virginia and 18VAC60-20-108 C, 18VAC60-20-110 F, and 18VAC60-20-120 F;

8. Administering nitrous oxide or oxygen inhalation analgesia;

9. Condensing, contouring or adjusting any final, fixed or removable prosthodontic appliance or restoration in the mouth;

10. Final positioning and attachment of orthodontic bonds and bands;

11. Taking impressions for master casts to be used for prosthetic restoration of teeth or oral structures;

12. Final cementation of crowns and bridges; and

13. Placement of retraction cord.

18VAC60-20-195. Radiation certification.

No person not otherwise licensed by this board shall place or expose dental x-ray film unless he has (i) satisfactorily completed a course or examination recognized by the Commission on Dental Accreditation of the American Dental Association, (ii) been certified by the American Registry of Radiologic Technologists, (iii) satisfactorily completed a course and passed an examination in compliance with guidelines provided by the board, or (iv) satisfactorily completed a radiation course and passed an examination given by the Dental Assisting National Board. Any certificate issued pursuant to satisfying the requirements of this section shall be posted in plain view of the patient.

18VAC60-20-200. Utilization of dental hygienists.

No dentist shall have more than two dental hygienists practicing under direction or general supervision at one and the same time, with the exception that a dentist may issue written orders for services to be provided by dental hygienists under general supervision in a free clinic, a public health program, or on a voluntary basis.

18VAC60-20-210. Requirements for direction and general supervision.

A. In all instances, a licensed dentist assumes ultimate responsibility for determining, on the basis of his diagnosis, the specific treatment the patient will receive and which aspects of treatment will be delegated to qualified personnel in accordance with this chapter and the Code of Virginia.

B. Dental hygienists shall engage in their respective duties only while in the employment of a licensed dentist or governmental agency or when volunteering services as provided in 18VAC60-20-200. Persons acting within the scope of a license issued to them by the board under §54.1-2725 of the Code of Virginia to teach dental hygiene and those persons licensed pursuant to §54.1-2722 of the Code of Virginia providing oral health education and preliminary dental screenings in any setting are exempt from this section.

C. Duties delegated to a dental hygienist under direction shall only be performed when the dentist is present in the facility and available to evaluate the patient during the time services are being provided.

D. Duties that are delegated to a dental hygienist under general supervision shall only be performed if the following requirements are met:

1. The treatment to be provided shall be ordered by a dentist licensed in Virginia and shall be entered in writing in the record. The services noted on the original order shall be rendered within a specific time period, not to exceed seven months from the date the dentist last examined the patient. Upon expiration of the order, the dentist shall have evaluated the patient before writing a new order for treatment.

2. The dental hygienist shall consent in writing to providing services under general supervision.

3. The patient or a responsible adult shall be informed prior to the appointment that no dentist will be present, that no anesthesia can be administered, and that only those services prescribed by the dentist will be provided.

4. Written basic emergency procedures shall be established and in place, and the hygienist shall be capable of implementing those procedures.

E. General supervision shall not preclude the use of direction when, in the professional judgment of the dentist, such direction is necessary to meet the individual needs of the patient.

18VAC60-20-220. Dental hygienists.

A. The following duties shall only be delegated to dental hygienists under direction with the dentist being present:

1. Scaling and root planing of natural and restored teeth using hand instruments, rotary instruments and ultrasonic devices under anesthesia administered by the dentist.

2. Performing an initial examination of teeth and surrounding tissues including the charting of carious lesions, periodontal pockets or other abnormal conditions for assisting the dentist in the diagnosis.

B. The following duties shall only be delegated to dental hygienists and may be delegated by written order in accordance with §54.1-3408 of the Code of Virginia to be performed under general supervision without the dentist being present:

1. Scaling and root planing of natural and restored teeth using hand instruments, rotary instruments and ultrasonic devices.

2. Polishing of natural and restored teeth using air polishers.

3. Performing a clinical examination of teeth and surrounding tissues including the charting of carious lesions, periodontal pockets or other abnormal conditions for further evaluation and diagnosis by the dentist.

4. Subgingival irrigation or subgingival application of topical Schedule VI medicinal agents.

5. Duties appropriate to the education and experience of the dental hygienist and the practice of the supervising dentist, with the exception of those listed in subsection A of this section and those listed as nondelegable in 18VAC60-20-190.

C. Nothing in this section shall be interpreted so as to prevent a licensed dental hygienist from providing educational services, assessment, screening or data collection for the preparation of preliminary written records for evaluation by a licensed dentist.

18VAC60-20-230. Delegation to dental assistants.

Duties appropriate to the training and experience of the dental assistant and the practice of the supervising dentist may be delegated to a dental assistant under the direction required in 18VAC60-20-210, with the exception of those listed as nondelegable in 18VAC60-20-190 and those which may only be delegated to dental hygienists as listed in 18VAC60-20-220.

18VAC60-20-240. What does not constitute practice.

The following are not considered the practice of dental hygiene and dentistry:

1. Oral health education and preliminary dental screenings in any setting.

2. Recording a patient's pulse, blood pressure, temperature, and medical history.

Part VII. Oral and Maxillofacial Surgeons.

18VAC60-20-250. Registration of oral and maxillofacial surgeons.

Within 60 days after the effective date of this section, every licensed dentist who practices as an oral and maxillofacial surgeon, as defined in §54.1-2700 of the Code of Virginia, shall register his practice with the board and pay a fee of $175.

1. After initial registration, an oral and maxillofacial surgeon shall renew his registration annually on or before December 31 by payment of a fee of $175.

2. An oral and maxillofacial surgeon who fails to register or to renew his registration and continues to practice oral and maxillofacial surgery may be subject to disciplinary action by the board.

3. Within one year of the expiration of a registration, an oral and maxillofacial surgeon may renew by payment of the renewal fee and a late fee of $55.

4. After one year from the expiration date, an oral and maxillofacial surgeon who wishes to reinstate his registration shall update his profile and pay the renewal fee and a reinstatement fee of $175.

18VAC60-20-260. Profile of information for oral and maxillofacial surgeons.

A. In compliance with requirements of §54.1-2709.2 of the Code of Virginia, an oral and maxillofacial surgeon registered with the board shall provide, upon initial request, the following information within 30 days or at a later date if so specified:

1. The address of the primary practice setting and all secondary practice settings with the percentage of time spent at each location;

2. Names of dental or medical schools with dates of graduation;

3. Names of graduate medical or dental education programs attended at an institution approved by the Accreditation Council for Graduate Medical Education, the Commission on Dental Accreditation, and the American Dental Association with dates of completion of training;

4. Names and dates of specialty board certification or board eligibility, if any, as recognized by the Council on Dental Education and Licensure of the American Dental Association;

5. Number of years in active, clinical practice in the United States or Canada, following completion of medical or dental training and the number of years, if any, in active, clinical practice outside the United States or Canada;

6. Names of insurance plans accepted or managed care plans in which the oral and maxillofacial surgeon participates and whether he is accepting new patients under such plans;

7. Names of hospitals with which the oral and maxillofacial surgeon is affiliated;

8. Appointments within the past 10 years to dental school faculties with the years of service and academic rank;

9. Publications, not to exceed 10 in number, in peer-reviewed literature within the most recent five-year period;

10. Whether there is access to translating services for non-English speaking patients at the primary practice setting and which, if any, foreign languages are spoken in the practice; and

11. Whether the oral and maxillofacial surgeon participates in the Virginia Medicaid Program and whether he is accepting new Medicaid patients;

B. The oral and maxillofacial surgeon may provide additional information on hours of continuing education earned, subspecialities obtained, honors or awards received.

C. Whenever there is a change in the information on record with the profile system, the oral and maxillofacial surgeon shall provide current information in any of the categories in subsection A of this section within 30 days.

18VAC60-20-270. Reporting of malpractice paid claims and disciplinary notices and orders.

A. In compliance with requirements of §54.1-2709.4 of the Code of Virginia, a dentist registered with the board as an oral and maxillofacial surgeon shall report all malpractice paid claims in the most recent 10-year period. Each report of a settlement or judgment shall indicate:

1. The year the claim was paid;

2. The total amount of the paid claim in United States dollars; and

3. The city, state, and country in which the paid claim occurred.

B. The board shall use the information provided to determine the relative frequency of paid claims described in terms of the percentage who have made malpractice payments within the most recent 10-year period. The statistical methodology used will be calculated on more than 10 paid claims for all dentists reporting, with the top 16% of the paid claims to be displayed as above-average payments, the next 68% of the paid claims to be displayed as average payments, and the last 16% of the paid claims to be displayed as below-average payments.

C. Adjudicated notices and final orders or decision documents, subject to §54.1-2400.2 D of the Code of Virginia, shall be made available on the profile. Information shall also be posted indicating the availability of unadjudicated notices and of orders that are subject to being vacated at determination of the practitioner.

18VAC60-20-280. Noncompliance or falsification of profile.

A. The failure to provide the information required in subsection A of 18VAC60-20-260 may constitute unprofessional conduct and may subject the licensee to disciplinary action by the board.

B. Intentionally providing false information to the board for the profile system shall constitute unprofessional conduct and shall subject the licensee to disciplinary action by the board.

18VAC60-20-290. Certification to perform cosmetic procedures; applicability.

A. In order for an oral and maxillofacial surgeon to perform aesthetic or cosmetic procedures, he shall be certified by the board pursuant to §54.1-2709.1 of the Code of Virginia. Such certification shall only entitle the licensee to perform procedures above the clavicle or within the head and neck region of the body.

B. Based on the applicant's education, training and experience, certification may be granted to perform one or more of these or similar procedures:

1. Rhinoplasty;

2. Blepharoplasty;

3. Rhytidectomy;

4. Submental liposuction;

5. Laser resurfacing or dermabrasion;

6. Browlift (either open or endoscopic technique);

7. Platysmal muscle plication; and

8. Otoplasty.

18VAC60-20-300. Certification not required.

Certification shall not be required for performance of the following:

1. Treatment of facial diseases and injuries, including maxillofacial structures;

2. Facial fractures, deformity and wound treatment;

3. Repair of cleft lip and palate deformity;

4. Facial augmentation procedures; and

5. Genioplasty.

18VAC60-20-310. Credentials required for certification.

A. An applicant for certification shall:

1. Hold an active, unrestricted license from the board;

2. Submit a completed application and fee of $225;

3. Complete an oral and maxillofacial residency program accredited by the Commission on Dental Accreditation;

4. Hold board certification by the American Board of Oral and Maxillofacial Surgery (ABOMS) or board eligibility as defined by ABOMS;

5. Have current privileges on a hospital staff to perform oral and maxillofacial surgery; and

6. If his oral and maxillofacial residency or cosmetic clinical fellowship was completed after July 1, 1996, and training in cosmetic surgery was a part of such residency or fellowship, the applicant shall submit:

a. A letter from the director of the residency or fellowship program documenting the training received in the residency or in the clinical fellowship to substantiate adequate training in the specific procedures for which the applicant is seeking certification; and

b. Documentation of having performed as primary or assistant surgeon at least 10 proctored cases in each of the procedures for which he seeks to be certified.

7. If his oral and maxillofacial residency was completed prior to July 1, 1996, or if his oral and maxillofacial residency was completed after July 1, 1996, and training in cosmetic surgery was not a part of the applicant's residency, the applicant shall submit:

a. Documentation of having completed didactic and clinically approved courses to include the dates attended, the location of the course, and a copy of the certificate of attendance. Courses shall provide sufficient training in the specific procedures requested for certification and shall be offered by:

(1) An advanced specialty education program in oral and maxillofacial surgery accredited by the Commission on Dental Accreditation;

(2) A medical school accredited by the Liaison Committee on Medical Education or other official accrediting body recognized by the American Medical Association;

(3) The American Dental Association (ADA) or one of its constituent and component societies or other ADA Continuing Education Recognized Programs (CERP) approved for continuing dental education; or

(4) The American Medical Association approved for category 1, continuing medical education.

b. Documentation of either:

(1) Holding current privileges to perform cosmetic surgical procedures within a hospital accredited by the Joint Commission on Accreditation of Healthcare Organizations; or

(2) Having completed at least 10 cases as primary or secondary surgeon in the specific procedures for which the applicant is seeking certification, of which at least five shall be proctored cases as defined in this chapter.

18VAC60-20-320. Renewal of certification.

In order to renew his certification to perform cosmetic procedures, an oral and maxillofacial surgeon shall possess a current, active, unrestricted license to practice dentistry from the Virginia Board of Dentistry and shall submit along with the renewal application a fee of $100 on or before December 31 of each year. If an oral and maxillofacial surgeon fails to renew his certificate, the certificate is lapsed and performance of cosmetic procedures is not permitted. To renew a lapsed certificate within one year of expiration, the oral and maxillofacial surgeon shall pay the renewal fees and a late fee of $35. To reinstate a certification that has been lapsed for more than one year shall require completion of a reinstatement form documenting continued competency in the procedures for which the surgeon is certified and payment of a reinstatement fee of $225.

18VAC60-20-330. Quality assurance review for procedures performed by certificate holders.

A. On a schedule of no less than once every three years, a random audit of charts for patients receiving cosmetic procedures shall be performed by a certificate holder in a facility not accredited by Joint Commission on Accreditation of Healthcare Organizations or other nationally recognized certifying organizations as determined by the board.

B. Oral and maxillofacial surgeons certified to perform cosmetic procedures shall maintain separate files, an index, coding or other system by which such charts can be identified by cosmetic procedure.

C. Cases selected in a random audit shall be reviewed for quality assurance by a person qualified to perform cosmetic procedures according to a methodology determined by the board.

18VAC60-20-331. Complaints against certificate holders for cosmetic procedures.

Complaints arising out of performance of cosmetic procedures by a certified oral and maxillofacial surgeon shall be adjudicated solely by the Board of Dentistry. Upon receipt of the investigation report on such complaints, the Board of Dentistry shall promptly notify the Board of Medicine, and the investigation report shall be reviewed and an opinion rendered by both a physician licensed by the Board of Medicine who actively practices in a related specialty and by an oral and maxillofacial surgeon licensed by the Board of Dentistry pursuant to §54.1-2502 of the Code of Virginia. The Board of Medicine shall maintain the confidentiality of the complaint consistent with §54.1-2400.2 of the Code of Virginia.

FINAL REGULATIONS OF THE VIRGINIA BOARD OF DENTISTRY
(Effective September 12, 2001)
18 VAC 60-10-10 et seq.
PUBLIC PARTICIPATION GUIDELINES

Part I.
Statement of Purpose.

18 VAC 60-10-10. Purpose.

The purpose of this chapter is to provide guidelines for the involvement of the public in the development and promulgation of regulations of the Board of Dentistry. The guidelines do not apply to regulations exempted or excluded from the provisions of the Administrative Process Act (§ 9-6.14:4.1.1 of the Code of Virginia). These rules seek to expand participation by providing for electronic exchange with the public and thereby increasing participation, reducing costs, and improving the speed of communication.

18 VAC 60-10-20. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise:

"*Administrative Process Act"* means Chapter 1.1:1 (§ 9-6.14:1 et seq.) of Title 9 of the Code of Virginia.

"*Board*" means the Board of Dentistry.

"Notification lists" means lists used by the board to notify persons pursuant to these rules. Such lists may include electronic mailing lists maintained through a state website or regular mailing lists maintained by the board.

"*Person*" means an individual, a corporation, a partnership, an association, a governmental body, a municipal corporation, or any other legal entity.

Part II.
Notification Lists.

18 VAC 60-10-30. Composition of lists.

A. The board shall maintain lists of persons who have requested to be notified of the formation and promulgation of regulations.

B. Any person may request to be placed on a notification list by indicating so electronically or in writing to the board. The board may add to a list any person it believes will serve the purpose of enhancing participation in the regulatory process.

C. The board may maintain additional lists for persons who have requested to be informed of specific regulatory issues, proposals, or actions.

D. The board shall periodically request those persons on the notification lists to indicate their desire to either continue to receive documents by regular mail, be notified electronically or be deleted from the lists. Persons who elect to be included on an electronic mailing list may also request that all notices and mailings be sent in hard copy. When either regular or electronic mail is returned as undeliverable or there has been no response to the request from the board, such persons shall be deleted from the list.

18 VAC 60-10-40. Documents to be sent to persons on the lists.

Persons on the notification lists, as described in 18 VAC 60-20-30, shall be mailed or have electronically transmitted the following documents related to the promulgation of regulations:

1. A notice of intended regulatory action.
2. A notice of the comment period on a proposed regulation and instructions as to how to obtain a copy of the regulation and any supporting documents, either electronically or from the board office.
3. A notification of the adoption of a final regulation and instructions as to how to obtain

a copy of the regulation and any supporting documents, either electronically or from the board office.

4. A notice soliciting comment on a final regulation when the regulatory process has been extended.

Part III.
Public Participation Procedures.

18 VAC 60-10-50. Petition for rulemaking.

A. As provided in § 9-6.14:7.1. of the Code of Virginia, any person may petition the board to develop a new regulation or amend an existing regulation.

B. A petition shall include but need not be limited to the following:

1. The petitioner's name, mailing address, telephone number, and, if applicable, the organization represented in the petition.

2. The number and title of the regulation to be addressed.

3. A description of the regulatory problem or need to be addressed.

4. A recommended addition, deletion, or amendment to the regulation.

C. The board shall receive, consider and respond to a petition within 180 days.

D. Nothing herein shall prohibit the board from receiving information from the public and proceeding on its own motion for rulemaking.

18 VAC 60-10-60. Notice of Intended Regulatory Action.

A. The notice of intended regulatory action (NOIRA) shall state the purpose of the action and a brief statement of the need or problem the proposed action will address.

B. The NOIRA shall indicate whether the board intends to hold a public hearing on the proposed regulation after it is published. If the board does not intend to hold a public hearing, it shall state the reason in the NOIRA.

C. If prior to the close of the 30-day comment period on the NOIRA, the board receives a request for a public hearing on the proposed regulation from at least 25 persons, such a hearing shall be scheduled.

18 VAC 60-10-70. Notice of Comment Period.

A. The notice of comment period (NOCP) shall indicate that copies of the proposed regulation are available electronically or from the board and may be requested in writing from the contact person specified in the NOCP.

B. The NOCP shall indicate that copies of the statement of substance, issues, basis, purpose, and estimated impact of the proposed regulation may also be requested in writing.

C. The NOCP shall make provision for comments pertaining to the proposed regulation by regular mail, internet, facsimile or electronic means. With the exception of comment received at a scheduled public hearing, oral comment may not be accepted.

18 VAC 60-10-80. Notice of Meeting.

A. At any meeting of the board or advisory committee, at which the formation or adoption of regulation is anticipated, the subject shall be described in a notice of meeting, which has been posted electronically on the Internet and transmitted to the Registrar for inclusion in The Virginia Register.

B. If the board anticipates action on a regulation for which an exemption to the Administrative Process Act is claimed under § 9-6.14:4.1. of the Code of Virginia, the notice of meeting shall indicate that a copy of the proposed regulation is available on a state website or upon request to the board at least two days prior to the meeting and that a copy of the regulation shall be made available to the public attending such meeting.

18 VAC 60-10-90. Public hearings on regulations.

The board shall conduct a public hearing during the 60-day comment period following the publication of a proposed regulation or amendment to an existing regulation, unless, at a noticed meeting, the board determines that a hearing is not required.

18 VAC 60-10-100. Periodic review of regulations.

A. Unless otherwise directed by Executive Order, the board shall conduct an informational proceeding at least every two years to receive comment on all existing regulations as to their effectiveness, efficiency, necessity, clarity, and cost of compliance.

B. Such proceeding may be conducted separately or in conjunction with other informational proceedings or hearings.

C. Notice of the proceeding shall be transmitted to the Registrar for inclusion in The Virginia Register and shall be sent to the mailing list identified in 18 VAC 60-10-30.

Part IV.
Advisory Committees.

18 VAC 60-10-110. Appointment of committees.

A. The board may appoint an ad hoc advisory committee whose responsibility shall be to assist in the review and development of regulations for the board.

B. The board may appoint an ad hoc advisory committee to provide professional specialization or technical assistance when the board determines that such expertise is necessary to address a specific regulatory issue or need or when groups of individuals register an interest in working with the agency.

18 VAC 60-10-120. Limitation of service.

A. An advisory committee which has been appointed by the board may be dissolved by the board when:
   1. There is no response to the Notice of Intended Regulatory Action, or
   2. The board determines that the promulgation of the regulation is either exempt or excluded from the requirements of the Administrative Process Act (§ 9-6.14:4.1.) of the Code of Virginia.

B. An advisory committee shall remain in existence no longer than 12 months from its initial appointment.
   1. If the board determines that the specific regulatory need continues to exist beyond that time, it shall set a specific term for the committee of not more than six additional months.
   2. At the end of that extended term, the board shall evaluate the continued need and may continue the committee for additional six month terms.

Commonwealth of Virginia

REGULATIONS
GOVERNING THE PRACTICE OF DENTISTRY AND DENTAL HYGIENE

VIRGINIA BOARD OF DENTISTRY

Title of Regulations: 18 VAC 60-20-10 et seq.

Statutory Authority: § 54.1-2400 and Chapter 27 of Title 54.1 of the *Code of Virginia*

Effective: September 1, 2005 to August 31, 2006

(804) 662-9906 (TEL)
(804) 662-7246 (FAX)
email: denltc@dhp.virginia.gov

TABLE OF CONTENTS

Part I. General Provisions.

18VAC60-20-10. Definitions.

The following words and terms when used in this chapter shall have the following meanings unless the context clearly indicates otherwise:

"ADA" means the American Dental Association.

"Advertising" means a representation or other notice given to the public or members thereof, directly or indirectly, by a dentist on behalf of himself, his facility, his partner or associate, or any dentist affiliated with the dentist or his facility by any means or method for the purpose of inducing purchase, sale or use of dental methods, services, treatments, operations, procedures or products, or to promote continued or increased use of such dental methods, treatments, operations, procedures or products.

"Analgesia" means the diminution or elimination of pain in the conscious patient.

"Anxiolysis" means the diminution or elimination of anxiety through the use of pharmacological agents in a dosage that does not cause depression of consciousness.

"Conscious sedation" means a minimally depressed level of consciousness that retains the patient's ability to independently and continuously maintain an airway and respond appropriately to physical stimulation and verbal commands, produced by pharmacological or nonpharmacological methods, including inhalation, parenteral, transdermal or enteral, or a combination thereof.

"Deep sedation/general anesthesia" means an induced state of depressed consciousness or unconsciousness accompanied by a complete or partial loss of protective reflexes, including the inability to continually maintain an airway independently and/or respond purposefully to physical stimulation or verbal command and is produced by a pharmacological or nonpharmacological method or a combination thereof.

"Dental assistant" means any unlicensed person under the supervision of a dentist who renders assistance for services provided to the patient as authorized under this chapter but shall not include an individual serving in purely a secretarial or clerical capacity.

"Direction" means the dentist examines the patient and is present for observation, advice, and control over the performance of dental services.

"Enteral" is any technique of administration in which the agent is absorbed through the gastrointestinal tract or oral mucosa (i.e., oral, rectal, sublingual).

"General supervision" means that the dentist has examined the patient and issued a written order for the specific, authorized services to be provided by a dental hygienist when the dentist is not present in the facility while the services are being provided.

"Inhalation" is a technique of administration in which a gaseous or volatile agent, including nitrous oxide, is introduced into the pulmonary tree and whose primary effect is due to absorption through the pulmonary bed.

"Inhalation analgesia" means the inhalation of nitrous oxide and oxygen to produce a state of reduced sensibility to pain without the loss of consciousness.

"Local anesthesia" means the loss of sensation or pain in the oral cavity or the maxillofacial or adjacent and associated structures generally produced by a topically applied or injected agent without depressing the level of consciousness.

"Parenteral" means a technique of administration in which the drug bypasses the gastrointestinal tract (i.e., intramuscular, intravenous, intranasal, submuscosal, subcutaneous, or intraocular).

"Radiographs" means intraoral and extraoral x-rays of hard and soft tissues to be used for purposes of diagnosis.

18VAC60-20-15. Recordkeeping.

A dentist shall maintain patient records for not less than three years from the most recent date of service for purposes of review by the board to include the following:

1. Patient's name and date of treatment;

2. Updated health history;

3. Diagnosis and treatment rendered;

4. List of drugs prescribed, administered, dispensed and the quantity;

5. Radiographs;

6. Patient financial records;

7. Name of dentist and dental hygienist providing service; and

8. Laboratory work orders which meet the requirements of §54.1-2719 of the Code of Virginia.

18VAC60-20-16. Address of record.

At all times, each licensed dentist shall provide the board with a current, primary business address, and each dental hygienist shall provide a current mailing address. All required notices mailed by the board to any such licensee shall be validly given when mailed to the latest address given by the licensee. All changes of address shall be furnished to the board in writing within 30 days of such changes.

18VAC60-20-17. Criteria for delegation of informal fact-finding proceedings to an agency subordinate.

A. Decision to delegate.

In accordance with § 54.1-2400 (10) of the Code of Virginia, the board may delegate an informal fact-finding proceeding to an agency subordinate upon determination that probable cause exists that a practitioner may be subject to a disciplinary action.

B. Criteria for delegation. Cases that may not be delegated to an agency subordinate, except as may be approved by a committee of the board, include the following:

1. Intentional or negligent conduct that causes serious injury to a patient;

2. Impairment with an inability to practice with skill and safety;

3. Sexual misconduct;

4. Indiscriminate prescribing or dispensing;

5. Medication error in administration or dispensing;

6. Unauthorized practice.

C. Criteria for an agency subordinate.

1. An agency subordinate authorized by the board to conduct an informal fact-finding proceeding may include current or past board members and professional staff or other persons deemed knowledgeable by virtue of their training and experience in administrative proceedings involving the regulation and discipline of health professionals.

2. The executive director shall maintain a list of appropriately qualified persons to whom an informal fact-finding proceeding may be delegated.

3. The board may delegate to the executive director the selection of the agency subordinate who is deemed appropriately qualified to conduct a proceeding based on the qualifications of the subordinate and the type of case being heard.

Part II. Licensure Renewal and Fees.

18VAC60-20-20. License renewal and reinstatement.

A. Renewal fees. Every person holding an active or inactive license or a full-time faculty license shall, on or before March 31, renew his license. Every person holding a teacher's license, temporary resident's license, a restricted volunteer license to practice dentistry or dental hygiene or a temporary permit to practice dentistry or dental hygiene shall, on or before June 30, request renewal of his license.

1. The fee for renewal of an active license or permit to practice or teach dentistry shall be $150, and the fee for renewal of an active license or permit to practice or teach dental hygiene shall be $50.

2. The fee for renewal of an inactive license shall be $75 for dentists and $25 for dental hygienists.

3. The fee for renewal of a restricted volunteer license shall be $15.

4. The application fee for a temporary resident's license shall be $55. The annual renewal fee shall be $35 a year. An additional fee for late renewal of licensure shall be $15.

B. Late fees. Any person who does not return the completed form and fee by the deadline required in subsection A of this section shall be required to pay an additional late fee of $50 for dentists and $20 for dental hygienists. The board shall renew a license if the renewal form, renewal fee, and late fee are received within one year of the deadline required in subsection A of this section.

C. Reinstatement fees and procedures. The license of any person who does not return the completed renewal form and fees by the deadline required in subsection A of this section shall automatically expire and become invalid and his practice of dentistry/dental hygiene shall be illegal.

1. Any person whose license has expired for more than one year and who wishes to reinstate such license shall submit to the board a reinstatement application, the renewal fee and the reinstatement fee of $225 for dentists and $135 for dental hygienists.

2. With the exception of practice with a restricted volunteer license as provided in §§ 54.1-2712.1 and 54.1-2726.1 of the Code of Virginia, practicing in Virginia with an expired license may subject the licensee to disciplinary action by the board.

3. The executive director may reinstate such expired license provided that the applicant can demonstrate continuing competence, that no grounds exist pursuant to § 54.1-2706 of the Code of Virginia and 18 VAC 60-20-170 to deny said reinstatement, and that the applicant has paid the unpaid renewal fee, the reinstatement fee and any fines or assessments. Evidence of continuing competence shall include hours of continuing education as required by subsection H of 18 VAC 60-20-50 and may also include evidence of active practice in another state or in federal service or current specialty board certification.

D. Reinstatement of a license previously revoked or indefinitely suspended. Any person whose license has been revoked shall submit to the board for its approval a reinstatement application and fee of $750 for dentists and $500 for dental hygienists. Any person whose license has been indefinitely suspended shall submit to the board for its approval a reinstatement application and fee of $350 for dentists and $250 for dental hygienists.

18VAC60-20-30. Other fees.

A. Dental licensure application fees. The application fee for a dental license, a license to teach dentistry, a full-time faculty license, or a temporary permit as a dentist shall be $225.

B. Dental hygiene licensure application fees. The application fee for a dental hygiene license by examination, a license to teach dental hygiene, or a temporary permit as a dental hygienist shall be $135.

C. Duplicate wall certificate. Licensees desiring a duplicate wall certificate shall submit a request in writing stating the necessity for such duplicate wall certificate, accompanied by a fee of $25.

D. Duplicate license. Licensees desiring a duplicate license shall submit a request in writing stating the necessity for such duplicate license, accompanied by a fee of $10. If a licensee maintains more than one office, a notarized photocopy of a license may be used.

E. Licensure certification. Licensees requesting endorsement or certification by this board shall pay a fee of $25 for each endorsement or certification.

F. Restricted license. Restricted license issued in accordance with §54.1-2714 of the Code of Virginia shall be at a fee of $150.

G. Endorsement license. License by endorsement issued in accordance with 18VAC60-20-80 for dental hygienists shall be at a fee of $135.

H. Restricted volunteer license. The application fee for licensure as a restricted volunteer dentist or dental hygienist issued in accordance with §54.1-2712.1 or §54.1-2726.1 of the Code of Virginia shall be $25.

I. Returned check. The fee for a returned check shall be $25.

18VAC60-20-40. Refunds.

No fee will be refunded or applied for any purpose other than the purpose for which the fee is submitted.

18VAC60-20-50. Requirements for continuing education.

A. After April 1, 1995, a dentist or a dental hygienist shall be required to have completed a minimum of 15 hours of approved continuing education for each annual renewal of licensure.

1. Effective June 29, 2006, a dentist or a dental hygienist shall be required to maintain evidence of successful completion of training in basic cardiopulmonary resuscitation.

2. Effective June 29, 2006, a dentist who administers or a dental hygienist who monitors patients under general anesthesia, deep sedation or conscious sedation shall complete four hours every two years of approved continuing education directly related to administration or monitoring of such anesthesia or sedation as part of the hours required for licensure renewal.

3. Continuing education hours in excess of the number required for renewal may be transferred or credited to the next renewal year for a total of not more than 15 hours.

B. An approved continuing dental education program shall be relevant to the treatment and care of patients and shall be:

1. Clinical courses in dentistry and dental hygiene; or

2. Nonclinical subjects that relate to the skills necessary to provide dental or dental hygiene services and are supportive of clinical services (i.e., patient management, legal and ethical responsibilities, stress management). Courses not acceptable for the purpose of this subsection include, but are not limited to, estate planning, financial planning, investments, and personal health.

C. Continuing education credit may be earned for verifiable attendance at or participation in any courses, to include audio and video presentations, which meet the requirements in subsection B of this section and which are given by one of the following sponsors:

1. American Dental Association and National Dental Association, their constituent and component/branch associations;

2. American Dental Hygienists' Association and National Dental Hygienists Association, their constituent and component/branch associations;

3. American Dental Assisting Association, its constituent and component/branch associations;

4. American Dental Association specialty organizations, their constituent and component/branch associations;

5. American Medical Association and National Medical Association, their specialty organizations, constituent, and component/branch associations;

6. Academy of General Dentistry, its constituent and component/branch associations;

7. Community colleges with an accredited dental hygiene program if offered under the auspices of the dental hygienist program;

8. A college or university that is accredited by an accrediting agency approved by the U.S. Department of Education or a hospital or health care institution accredited by the Joint Commission on Accreditation of Health Care Organizations;

9. The American Heart Association, the American Red Cross, the American Safety and Health Institute and the American Cancer Society;

10. A medical school which is accredited by the American Medical Association's Liaison Committee for Medical Education or a dental school or dental specialty residency program accredited by the Commission on Dental Accreditation of the American Dental Association;

11. State or federal government agencies (i.e., military dental division, Veteran's Administration, etc.);

12. The Commonwealth Dental Hygienists' Society;

13. The MCV Orthodontic and Research Foundation;

14. The Dental Assisting National Board; or

15. A regional testing agency (i.e., Central Regional Dental Testing Service, Northeast Regional Board of Dental Examiners, Southern Regional Testing Agency, or Western Regional Examining Board) when serving as an examiner.

D. A licensee is exempt from completing continuing education requirements and considered in compliance on the first renewal date following the licensee's initial licensure.

E. The board may grant an exemption for all or part of the continuing education requirements due to circumstances beyond the control of the licensee, such as temporary disability, mandatory military service, or officially declared disasters.

F. A licensee is required to provide information on compliance with continuing education requirements in his annual license renewal. Following the renewal period, the board may conduct an audit of licensees to verify compliance. Licensees selected for audit must provide original documents certifying that they have fulfilled their continuing education requirements by the deadline date as specified by the board.

G. All licensees are required to maintain original documents verifying the date and subject of the program or activity. Documentation must be maintained for a period of four years following renewal.

H. A licensee who has allowed his license to lapse, or who has had his license suspended or revoked, must submit evidence of completion of continuing education equal to the requirements for the number of years in which his license has not been active, not to exceed a total of 45 hours. Of the required hours, at least 15 must be earned in the most recent 12 months and the remainder within the 36 months preceding an application for reinstatement.

I. Continuing education hours required by board order shall not be used to satisfy the continuing education requirement for license renewal or reinstatement.

J. Failure to comply with continuing education requirements may subject the licensee to disciplinary action by the board.

Part III. Entry and Licensure Requirements.

18VAC60-20-60. Education.

A. Dental licensure. An applicant for dental licensure shall be a graduate and a holder of a diploma or a certificate from a dental program accredited by the Commission on Dental Accreditation of the American Dental Association, which consists of either a pre-doctoral dental education program or at least a 12-month post-doctoral advanced general dentistry program or a post-doctoral dental education program in any other specialty.

B. Dental hygiene licensure. An applicant for dental hygiene licensure shall have graduated from or have been issued a certificate by a program of dental hygiene accredited by the Commission on Dental Accreditation of the American Dental Association.

18VAC60-20-70. Licensure examinations.

A. Dental examinations.

1. All applicants shall have successfully completed Part I and Part II of the examinations of the Joint Commission on National Dental Examinations prior to making application to this board.

2. All applicants to practice dentistry shall satisfactorily pass the complete board-approved examinations in dentistry. Applicants who successfully completed the board-approved examinations five or more years prior to the date of receipt of their applications for licensure by this board may be required to retake the examinations or take board-approved continuing education unless they demonstrate that they have maintained clinical, ethical and legal practice for 48 of the past 60 months immediately prior to submission of an application for licensure.

3. If the candidate has failed any section of a board-approved examination three times, the candidate shall complete a minimum of 14 hours of additional clinical training in each section of the examination to be retested in order to be approved by the board to sit for the examination a fourth time.

B. Dental hygiene examinations.

1. All applicants are required to successfully complete the dental hygiene examination of the Joint Commission on National Dental Examinations prior to making application to this board for licensure.

2. All applicants to practice dental hygiene shall successfully complete the board-approved examinations in dental hygiene, except those persons eligible for licensure pursuant to 18 VAC 60-20-80.

3. If the candidate has failed any section of a board-approved examination three times, the candidate shall complete a minimum of seven hours of additional clinical training in each section of the examination to be retested in order to be approved by the board to sit for the examination a fourth time.

C. All applicants who successfully complete the board-approved examinations five or more years prior to the date of receipt of their applications for licensure by this board may be required to retake the board-approved examinations or take board-approved continuing education unless they demonstrate that they have maintained clinical, ethical, and legal practice for 48 of the past 60 months immediately prior to submission of an application for licensure.

D. All applicants for licensure by examination shall be required to attest that they have read and understand and will remain current with the applicable Virginia dental and dental hygiene laws and the regulations of this board.

18VAC60-20-71. Licensure by credentials for dentists.

In accordance with § 54.1-2709 of the Code of Virginia, an applicant for licensure by credentials shall:

1. Be of good moral character and not have committed any act which would constitute a violation of § 54.1-2706 of the Code of Virginia;

2. Be a graduate of a dental program, school or college, or dental department of a university or college currently accredited by the Commission on Dental Accreditation of the American Dental Association.

3. Have passed Part I and Part II of the examination given by the Joint Commission on National Dental Examinations;

4. Have successfully completed a clinical examination acceptable to the board and have not failed a clinical examination required by the board in the five years immediately preceding his application;

5. Hold a current, unrestricted license to practice dentistry in another jurisdiction in the United States and is certified to be in good standing by each jurisdiction in which he currently holds or has held a license; and

6. Have been in continuous clinical practice for five out of the six years immediately preceding application for licensure pursuant to this section. Active patient care in the dental corps of the United States Armed Forces, volunteer practice in a public health clinic, or practice in an intern or residency program may be accepted by the board to satisfy this requirement. One year of clinical practice shall consist of a minimum of 600 hours of practice in a calendar year as attested by the applicant.

18VAC60-20-80. Licensure by endorsement for dental hygienists.

An applicant for dental hygiene endorsement licensure shall:

1. Be a graduate or be issued a certificate from an accredited dental hygiene school/program of dental hygiene recognized by the Commission on Dental Accreditation of the American Dental Association;

2. Be currently licensed to practice dental hygiene in another state, territory, District of Columbia, or possession of the United States, and have clinical, ethical, and legal practice for 24 out of the past 48 months immediately preceding application for licensure;

3. Be certified to be in good standing from each state in which he is currently licensed or has ever held a license;

4. Have successfully completed a clinical licensing examination substantially equivalent to that required by Virginia;

5. Not have failed the clinical examination accepted by the board within the last five years;

6. Be of good moral character;

7. Not have committed any act which would constitute a violation of § 54.1-2706 of the Code of Virginia;

8. Have successfully completed the dental hygiene examination of the Joint Commission on National Dental Examinations prior to making application to this board; and

9. Attest to having read and understand and to remain current with the laws and the regulations governing the practice of dentistry and dental hygiene in Virginia.

18VAC60-20-90. Temporary permit, teacher's license, and full-time faculty license.

A. A temporary permit shall be issued only for the purpose of allowing dental and dental hygiene practice as limited by §§ 54.1-2715 and 54.1-2726 of the Code of Virginia.

B. A temporary permit will not be renewed unless the permittee shows that extraordinary circumstances prevented the permittee from taking the licensure examination during the term of the temporary permit.

C. A full-time faculty license shall be issued to any dentist who meets the entry requirements of § 54.1-2713 of the Code of Virginia, who is certified by the dean of a dental school in the Commonwealth and who is serving full time on the faculty of a dental school or its affiliated clinics intramurally in the Commonwealth.

1. A full-time faculty license shall remain valid only while the license holder is serving full time on the faculty of a dental school in the Commonwealth. When any such license holder ceases to continue serving full time on the faculty of the dental school for which the license was issued, the licensee shall surrender the license, which shall be null and void upon termination of full-time employment. The dean of the dental school shall notify the board within five working days of such termination of full-time employment.

2. A full-time faculty licensee working in a faculty intramural clinic affiliated with a dental school may accept a fee for service.

D. A temporary permit, a teacher's license and a full-time faculty license may be revoked for any grounds for which the license of a regularly licensed dentist or dental hygienist may be revoked and for any act indicating the inability of the permittee or licensee to practice dentistry that is consistent with the protection of the public health and safety as determined by the generally accepted standards of dental practice in Virginia.

E. Applicants for a full-time faculty license or temporary permit shall be required to attest to having read and understand and to remaining current with the laws and the regulations governing the practice of dentistry in Virginia.

18VAC60-20-91. Temporary licenses to persons enrolled in advanced dental education programs.

A. A dental intern, resident or post-doctoral certificate or degree candidate applying for a temporary license to practice in Virginia shall:

1. Successfully complete a D.D.S. or D.M.D. dental degree program required for admission to board-approved examinations and submit a letter of confirmation from the registrar of the school or college conferring the professional degree, or official transcripts confirming the professional degree and date the degree was received.

2. Submit a recommendation from the dean of the dental school or the director of the accredited graduate program specifying the applicant's acceptance as an intern, resident or post-doctoral certificate or degree candidate in an advanced dental education program. The beginning and ending dates of the internship, residency or post-doctoral program shall be specified.

B. The temporary license applies only to practice in the hospital or outpatient clinics of the hospital or dental school where the internship, residency or post-doctoral time is served. Outpatient clinics in a hospital or other facility must be a recognized part of an advanced dental education program.

C. The temporary license may be renewed annually, for up to five times, upon the recommendation of the dean of the dental school or director of the accredited graduate program.

D. The temporary license holder shall be responsible and accountable at all times to a licensed dentist, who is a member of the staff where the internship, residency or post-doctoral candidacy is served. The temporary licensee is prohibited from employment outside of the advanced dental education program where a full license is required.

E. The temporary license holder shall abide by the accrediting requirements for an advanced dental education program as approved by the Commission on Dental Accreditation of the American Dental Association.

18VAC60-20-100. Other application requirements.

All applications for any license or permit issued by the board shall include:

1. A final certified transcript of the grades from the college from which the applicant received the dental degree, dental hygiene degree or certificate, or post-doctoral degree or certificate;

2. An original grade card issued by the Joint Commission on National Dental Examinations; and

3. A current report from the Healthcare Integrity and Protection Data Bank (HIPDB).

18VAC60-20-105. Inactive license.

A. Any dentist or dental hygienist who holds a current, unrestricted license in Virginia may, upon a request on the renewal application and submission of the required fee, be issued an inactive license. With the exception of practice with a restricted volunteer license as provided in §§ 54.1-2712.1 and 54.1-2726.1 of the Code of Virginia, the holder of an inactive license shall not be entitled to perform any act requiring a license to practice dentistry or dental hygiene in Virginia.

B. An inactive license may be reactivated upon submission of the required application, payment of the current renewal fee, and documentation of having completed continuing education hours equal to the requirement for the number of years in which the license has been inactive, not to exceed a total of 45 hours. Of the required hours,

at least 15 must be earned in the most recent 12 months and the remainder within the 36 months immediately preceding the application for activation. The board reserves the right to deny a request for reactivation to any licensee who has been determined to have committed an act in violation of § 54.1-2706 of the Code of Virginia.

18VAC60-20-106. Voluntary practice.

A. Restricted volunteer license.

1. In accordance with §§ 54.1-2712.1 or 54.1-2726.1, the board may issue a restricted volunteer license to a dentist or a dental hygienist who:

a. Held an unrestricted license in Virginia or another state as a licensee in good standing at the time the license expired or became inactive;

b. Is volunteering for a public health or community free clinic that provides dental services to populations of underserved people;

c. Has fulfilled the board's requirement related to knowledge of the laws and regulations governing the practice of dentistry in Virginia;

d. Has not failed a clinical examination within the past five years; and

e. Has had at least five years of clinical practice.

2. A person holding a restricted volunteer license under this section shall:

a. Only practice in public health or community free clinics that provide dental services to underserved populations;

b. Only treat patients who have been screened by the approved clinic and are eligible for treatment;

c. Attest on a form provided by the board that he will not receive remuneration directly or indirectly for providing dental services; and

d. Not be required to complete continuing education in order to renew such a license.

3. The restricted volunteer license shall specify whether supervision is required, and if not, the date by which it will be required. If a dentist with a restricted volunteer license issued under this section has not held an active, unrestricted license and been engaged in active practice within the past five years, he shall only practice dentistry and perform dental procedures if a dentist with an unrestricted Virginia license, volunteering at the clinic, reviews the quality of care rendered by the dentist with the restricted volunteer license at least every 30 days. If supervision is required, the supervising dentist shall directly observe patient care being provided by the restricted volunteer dentist and review all patient charts at least quarterly. Such supervision shall be noted in patient charts and maintained in accordance with 18VAC60-20-15.

4. A dental hygienist with a restricted volunteer license shall be sponsored by and practice only under the direction of a dentist who holds an unrestricted license in Virginia.

5. A restricted voluntary license granted pursuant to this section shall expire on the June 30 of the second year after its issuance, or shall terminate when the supervising dentist withdraws his sponsorship.

6. A dentist or dental hygienist holding a restricted volunteer license issued pursuant to this section is subject to the provisions of this chapter and the disciplinary regulations which apply to all licensees practicing in Virginia.

B. Registration for voluntary practice by out-of-state licensees.

Any dentist or dental hygienist who does not hold a license to practice in Virginia and who seeks registration to practice on a voluntary basis under the auspices of a publicly supported, all volunteer, nonprofit organization that sponsors the provision of health care to populations of underserved people shall:

a. File a complete application for registration on a form provided by the board at least 15 days prior to engaging in such practice;

b. Provide a complete record of professional licensure in each state in which he has held a license and a copy of any current license;

c. Provide the name of the nonprofit organization, the dates and location of the voluntary provision of services;

d. Pay a registration fee of $10; and

e. Provide a notarized statement from a representative of the nonprofit organization attesting to its compliance with provisions of subdivision 5 of §54.1-2701 of the Code of Virginia.

Part IV. Anesthesia, Sedation and Analgesia.

18 VAC 60-20-107. General provisions.

A. This part (18 VAC 60-20-107 et seq.) shall not apply to:

1. The administration of local anesthesia in dental offices; or

2. The administration of anesthesia in (i) a licensed hospital as defined in § 32.1-123 of the Code of Virginia or state-operated hospitals or (ii) a facility directly maintained or operated by the federal government.

B. Appropriateness of administration of general anesthesia or sedation in a dental office.

1. Anesthesia and sedation may be provided in a dental office for patients who are Class I and II as classified by the American Society of Anesthesiologists (ASA).

2. Conscious sedation, deep sedation or general anesthesia shall not be provided in a dental office for patients in ASA risk categories of Class IV and V.

3. Patients in ASA risk category Class III shall only be provided general anesthesia or sedation by:

a. A dentist after consultation with their primary care physician or other medical specialist regarding potential risk and special monitoring requirements that may be necessary; or

b. An oral and maxillofacial surgeon after performing an evaluation and documenting the ASA risk assessment category of the patient and any special monitoring requirements that may be necessary.

C. Prior to administration of sedation or general anesthesia, the dentist shall discuss the nature and objectives of the anesthesia or sedation planned along with the risks, benefits and alternatives and shall obtain informed, written consent from the patient or other responsible party.

D. The determinant for the application of these rules shall be the degree of sedation or consciousness level of a patient that should reasonably be expected to result from the type and dosage of medication, the method of administration and the individual characteristics of the patient as documented in the patient's record.

E. A dentist who is administering anesthesia or sedation to patients prior to June 29, 2005 shall have one year from that date to comply with the educational requirements set forth in this chapter for the administration of anesthesia or sedation.

18 VAC60-20-108. Administration of anxiolysis or inhalation analgesia.

A. Education and training requirements. A dentist who utilizes anxiolysis or inhalation analgesia shall have training in and knowledge of:

1. Medications used, the appropriate dosages and the potential complications of administration.

2. Physiological effects of nitrous oxide and potential complications of administration.

B. Equipment requirements. A dentist who utilizes anxiolysis or inhalation analgesia shall maintain the following equipment in his office and be trained in its use:

1. Blood pressure monitoring equipment.

2. Positive pressure oxygen.

3. Mechanical (hand) respiratory bag.

C. Monitoring requirements.

1. The treatment team for anxiolysis or inhalation analgesia shall consist of the dentist and a second person in the operatory with the patient to assist, monitor and observe the patient. One member of the team shall be in the operatory monitoring the patient at all times once the administration has begun.

2. A dentist who utilizes anxiolysis or inhalation analgesia shall ensure that there is continuous visual monitoring of the patient to determine the level of consciousness.

3. If inhalation analgesia is used, monitoring shall include making the proper adjustments of nitrous oxide machines at the request of the dentist during administration of the sedation and observing the patient's vital signs.

D. Discharge requirement. The dentist shall ensure that the patient is not discharged to his own care until he exhibits normal responses.

18VAC60-20-110. Requirements to administer deep sedation/general anesthesia.

A. Educational requirements. A dentist may employ or use deep sedation/general anesthesia on an outpatient basis by meeting one of the following educational criteria and by posting the educational certificate, in plain view of the patient, which verifies completion of the advanced training as required in subdivision 1 or 2 of this subsection. These requirements shall not apply nor interfere with requirements for obtaining hospital staff privileges.

1. Has completed a minimum of one calendar year of advanced training in anesthesiology and related academic subjects beyond the undergraduate dental school level in a training program in conformity with published guidelines by the American Dental Association (Guidelines for Teaching the Comprehensive Control of Anxiety and Pain in Dentistry) in effect at the time the training occurred; or

2. Completion of an American Dental Association approved residency in any dental specialty which incorporates into its curriculum a minimum of one calendar year of full-time training in clinical anesthesia and related clinical medical subjects (i.e. medical evaluation and management of patients), comparable to those set forth in published guidelines by the American Dental Association for Graduate and Postgraduate Training in Anesthesia in effect at the time the training occurred.

After June 29, 2006, dentists who administer deep sedation/general anesthesia shall hold current certification in advanced resuscitative techniques, such as courses in Advanced Cardiac Life Support or Pediatric Advanced Life Support and current Drug Enforcement Administration registration.

B. Exceptions.

1. A dentist who has not met the requirements specified in subsection A of this section may treat patients under deep sedation/general anesthesia in his practice if a qualified anesthesiologist or a dentist who fulfills the requirements specified in subsection A of this section, is present and is responsible for the administration of the anesthetic.

2. If a dentist fulfills the requirements specified in subsection A of this section, he may employ the services of a certified nurse anesthetist.

C. Posting. Any dentist who utilizes deep sedation/general anesthesia shall post with the dental license and current registration with the Drug Enforcement Administration, the certificate of education required under subsection A of this section.

D. Emergency equipment and techniques. A dentist who administers deep sedation/general anesthesia shall be proficient in handling emergencies and complications related to pain control procedures, including the maintenance of respiration and circulation, immediate establishment of an airway and cardiopulmonary resuscitation, and shall maintain the following emergency equipment in the dental facility:

1. Full face mask for children or adults, as appropriate for the patient being treated;

2. Oral and nasopharyngeal airways;

3. Endotracheal tubes for children or adults, or both, with appropriate connectors;

4. A laryngoscope with reserve batteries and bulbs and appropriately sized laryngoscope blades for children or adults, or both;

5. Source of delivery of oxygen under controlled positive pressure;

6. Mechanical (hand) respiratory bag;

7. Pulse oximetry and blood pressure monitoring equipment available and used in the treatment room;

8. Appropriate emergency drugs for patient resuscitation;

9. EKG monitoring equipment and temperature measuring devices;

10. Pharmacologic antagonist agents;

11. External defibrillator (manual or automatic); and

12. For intubated patients, an End-Tidal CO^2 monitor.

E. Monitoring requirements.

1. The treatment team for deep sedation/general anesthesia shall consist of the operating dentist, a second person to monitor and observe the patient and a third person to assist the operating dentist, all of whom shall be in the operatory with the patient during the dental procedure.

2. Monitoring of the patient under deep sedation/general anesthesia, including direct, visual observation of the patient by a member of the team, is to begin prior to induction of anesthesia and shall take place continuously during the dental procedure and recovery from anesthesia. The person who administered the anesthesia or another licensed practitioner qualified to administer the same level of anesthesia must remain on the premises of the dental facility until the patient has regained consciousness and is discharged.

3. Monitoring deep sedation/general anesthesia shall include the following: recording and reporting of blood pressure, pulse, respiration and other vital signs to the attending dentist.

18VAC60-20-120. Requirements to administer conscious sedation.

A. Automatic qualification. Dentists qualified to administer deep sedation/general anesthesia may administer conscious sedation.

B. Educational requirements for administration of conscious sedation by any method.

1. A dentist may employ or use any method of conscious sedation by meeting one of the following criteria:

a. Completion of training for this treatment modality according to guidelines published by the American Dental Association (Guidelines for Teaching the Comprehensive Control of Anxiety and Pain in Dentistry) in effect at the time the training occurred, while enrolled at an accredited dental program or while enrolled in a post-doctoral university or teaching hospital program; or

b. Completion of an approved continuing education course consisting of 60 hours of didactic instruction plus the management of at least 20 patients per participant, demonstrating competency and clinical experience in parenteral conscious sedation and management of a compromised airway. The course content shall be consistent with guidelines published by the American Dental Association (Guidelines for Teaching the Comprehensive Control of Anxiety and Pain in Dentistry) in effect at the time the training occurred.

2. A dentist who was self-certified in anesthesia and conscious sedation prior to January 1989 may continue to administer only conscious sedation.

C. Educational requirement for enteral administration of conscious sedation only. A dentist may administer conscious sedation by an enteral method if he has completed an approved continuing education program of not less than 18 hours of didactic instruction plus 20 clinically-oriented experiences in enteral and/or combination inhalation-enteral conscious sedation techniques. The course content shall be consistent with the guidelines published by the American Dental Association (Guidelines for Teaching the Comprehensive Control of Anxiety and Pain in Dentistry) in effect at the time the training occurred.

D. Additional training required. After June 29, 2006, dentists who administer conscious sedation shall hold current certification in advanced resuscitation techniques, such as Advanced Cardiac Life Support as evidenced by a certificate of completion posted with the dental license, and current registration with the Drug Enforcement Administration.

E. Emergency equipment and techniques. A dentist who administers conscious sedation shall be proficient in handling emergencies and complications related to pain control procedures, including the maintenance of respiration and circulation, immediate establishment of an airway and cardiopulmonary resuscitation, and shall maintain the following emergency airway equipment in the dental facility:

1. Full face mask for children or adults, as appropriate for the patient being treated;

2. Oral and nasopharyngeal airways;

3. Endotracheal tubes for children or adults, or both, with appropriate connectors and a laryngoscope with reserve batteries and bulbs and appropriately sized laryngoscope blades for children or adults, or both. In lieu of a laryngoscope and endotracheal tubes, a dentist may maintain airway adjuncts designed for the maintenance of a patent airway and the direct delivery of positive pressure oxygen;

4. Pulse oximetry;

5. Blood pressure monitoring equipment;

6. Pharmacologic antagonist agents;

7. Source of delivery of oxygen under controlled positive pressure;

8. Mechanical (hand) respiratory bag; and

9. Appropriate emergency drugs for patient resuscitation.

F. Monitoring requirements.

1. The administration team for conscious sedation shall consist of the operating dentist and a second person to assist, monitor and observe the patient.

2. Monitoring of the patient under conscious sedation, including direct, visual observation of the patient by a member of the team, is to begin prior to administration of sedation, or if medication is self-administered by the patient, when the patient arrives at the dental office and shall take place continuously during the dental

procedure and recovery from sedation. The person who administers the sedation or another licensed practitioner qualified to administer the same level of sedation must remain on the premises of the dental facility until the patient is responsive and is discharged.

18VAC60-20-130. (Repealed.).

18VAC60-20-135. Ancillary personnel.

After June 29, 2006, dentists who employ ancillary personnel to assist in the administration and monitoring of any form of conscious sedation or deep sedation/general anesthesia shall maintain documentation that such personnel have:

1. Minimal training resulting in current certification in basic resuscitation techniques, such as Basic Cardiac Life Support or an approved, clinically oriented course devoted primarily to responding to clinical emergencies offered by an approved provider of continuing education as set forth in 18 VAC 60-20-50 C; or

2. Current certification as a certified anesthesia assistant (CAA) by the American Association of Oral and Maxillofacial Surgeons or the American Dental Society of Anesthesiology (ADSA).

18VAC60-20-140. Report of adverse reactions.

A written report shall be submitted to the board by the treating dentist within 30 days following any mortality or morbidity which directly results from the administration of local anesthesia, general anesthesia, conscious sedation, or nitrous oxide oxygen inhalation analgesia and which occurs in the facility or during the first 24 hours immediately following the patient's departure from the facility.

Part V. Unprofessional Conduct.

18VAC60-20-150 to 18VAC60-20-160. [Repealed]

18VAC60-20-170. Acts constituting unprofessional conduct.

The following practices shall constitute unprofessional conduct within the meaning of §54.1-2706 of the Code of Virginia:

1. Fraudulently obtaining, attempting to obtain or cooperating with others in obtaining payment for services;

2. Performing services for a patient under terms or conditions which are unconscionable. The board shall not consider terms unconscionable where there has been a full and fair disclosure of all terms and where the patient entered the agreement without fraud or duress;

3. Misrepresenting to a patient and the public the materials or methods and techniques the licensee uses or intends to use;

4. Committing any act in violation of the Code of Virginia reasonably related to the practice of dentistry and dental hygiene;

5. Delegating any service or operation which requires the professional competence of a dentist or dental hygienist to any person who is not a dentist or dental hygienist as authorized by this chapter;

6. Certifying completion of a dental procedure that has not actually been completed;

7. Knowingly or negligently violating any applicable statute or regulation governing ionizing radiation in the Commonwealth of Virginia, including, but not limited to, current regulations promulgated by the Virginia Department of Health; and

8. Permitting or condoning the placement or exposure of dental x-ray film by an unlicensed person, except where the unlicensed person has complied with 18VAC60-20-195.

18VAC60-20-180. Advertising.

A. Practice limitation. A general dentist who limits his practice shall state in conjunction with his name that he is a general dentist providing only certain services, e.g., orthodontic services.

B. Fee disclosures. Any statement specifying a fee for a dental service which does not include the cost of all related procedures, services, and products which, to a substantial likelihood, will be necessary for the completion of the advertised services as it would be understood by an ordinarily prudent person shall be deemed to be deceptive or misleading. Where reasonable disclosure of all relevant variables and considerations is made, a statement of a range of fees for specifically described dental services shall not be deemed to be deceptive or misleading.

C. Discounts. Discount offers for a dental service are permissible for advertising only when the nondiscounted or full fee and the final discounted fee are also disclosed in the advertisement. The dentist shall maintain documented evidence to substantiate the discounted fee.

D. Retention of broadcast advertising. A prerecorded copy of all advertisements on radio or television shall be retained for a six-month period following the final appearance of the advertisement. The advertising dentist is responsible for making prerecorded copies of the advertisement available to the board within five days following a request by the board.

E. Routine dental services. Advertising of fees pursuant to subdivision F 3 of this section is limited to procedures which are determined by the board to be routine dental services as set forth in the American Dental Association's "Code on Dental Procedures and Nomenclature," as published in Current Dental Terminology (Second Edition, 1995-2000), which is hereby adopted and incorporated by reference.

F. The following practices shall constitute false, deceptive, or misleading advertising within the meaning of §54.1-2706 (7) of the Code of Virginia:

1. Publishing an advertisement which contains a material misrepresentation or omission of facts;

2. Publishing an advertisement which contains a representation or implication that is likely to cause an ordinarily prudent person to misunderstand or be deceived, or that fails to contain reasonable warnings or disclaimers necessary to make a representation or implication not deceptive;

3. Publishing an advertisement which fails to include the information and disclaimers required by this section;

4. Publishing an advertisement which contains a claim of professional superiority, claims to be a specialist, or uses any of the terms to designate a dental specialty unless he is entitled to such specialty designation under the guidelines or requirements for specialties approved by the American Dental Association (Requirements for

Recognition of Dental Specialties and National Certifying Boards for Dental Specialists, October 1995), or such guidelines or requirements as subsequently amended and approved by the dental disciplinary board, or other such organization recognized by the board; and

5. A dentist not currently entitled to such specialty designation shall not represent that his practice is limited to providing services in a specialty area without clearly disclosing in the representation that he is a general dentist. A specialist who represents services in areas other than his specialty is considered to be practicing general dentistry.

G. Signage. Advertisements, including but not limited to signage, containing descriptions of the type of dentistry practiced or a specific geographic locator are permissible so long as the requirements of §§54.1-2718 and 54.1-2720 of the Code of Virginia are complied with.

Part VI. Direction and Delegation Of Duties.

18VAC60-20-190. Nondelegable duties; dentists.

Only licensed dentists shall perform the following duties:

1. Final diagnosis and treatment planning;

2. Performing surgical or cutting procedures on hard or soft tissue;

3. Prescribing or parenterally administering drugs or medicaments;

4. Authorization of work orders for any appliance or prosthetic device or restoration to be inserted into a patient's mouth;

5. Operation of high speed rotary instruments in the mouth;

6. Performing pulp capping procedures;

7. Administering and monitoring general anesthetics and conscious sedation except as provided for in § 54.1-2701 of the Code of Virginia and 18VAC60-20-108 C, 18VAC60-20-110 F, and 18VAC60-20-120 F;

8. Administering nitrous oxide or oxygen inhalation analgesia;

9. Condensing, contouring or adjusting any final, fixed or removable prosthodontic appliance or restoration in the mouth;

10. Final positioning and attachment of orthodontic bonds and bands;

11. Taking impressions for master casts to be used for prosthetic restoration of teeth or oral structures;

12. Final cementation of crowns and bridges; and

13. Placement of retraction cord.

18VAC60-20-195. Radiation certification.

No person not otherwise licensed by this board shall place or expose dental x-ray film unless he has (i) satisfactorily completed a course or examination recognized by the Commission on Dental Accreditation of the American Dental Association, (ii) been certified by the American Registry of Radiologic Technologists, (iii) satisfactorily completed a course and passed an examination in compliance with guidelines provided by the board, or (iv) satisfactorily completed a radiation course and passed an examination given by the Dental Assisting National Board. Any certificate issued pursuant to satisfying the requirements of this section shall be posted in plain view of the patient.

18VAC60-20-200. Utilization of dental hygienists.

No dentist shall have more than two dental hygienists practicing under direction or general supervision at one and the same time, with the exception that a dentist may issue written orders for services to be provided by dental hygienists under general supervision in a free clinic, a public health program, or on a voluntary basis.

18VAC60-20-210. Requirements for direction and general supervision.

A. In all instances, a licensed dentist assumes ultimate responsibility for determining, on the basis of his diagnosis, the specific treatment the patient will receive and which aspects of treatment will be delegated to qualified personnel in accordance with this chapter and the Code of Virginia.

B. Dental hygienists shall engage in their respective duties only while in the employment of a licensed dentist or governmental agency or when volunteering services as provided in 18VAC60-20-200. Persons acting within the scope of a license issued to them by the board under §54.1-2725 of the Code of Virginia to teach dental hygiene and those persons licensed pursuant to §54.1-2722 of the Code of Virginia providing oral health education and preliminary dental screenings in any setting are exempt from this section.

C. Duties delegated to a dental hygienist under direction shall only be performed when the dentist is present in the facility and examines the patient during the time services are being provided.

D. Duties that are delegated to a dental hygienist under general supervision shall only be performed if the following requirements are met:

1. The treatment to be provided shall be ordered by a dentist licensed in Virginia and shall be entered in writing in the record. The services noted on the original order shall be rendered within a specific time period, not to exceed seven months from the date the dentist last examined the patient. Upon expiration of the order, the dentist shall have examined the patient before writing a new order for treatment.

2. The dental hygienist shall consent in writing to providing services under general supervision.

3. The patient or a responsible adult shall be informed prior to the appointment that no dentist will be present, that no anesthesia can be administered, and that only those services prescribed by the dentist will be provided.

4. Written basic emergency procedures shall be established and in place, and the hygienist shall be capable of implementing those procedures.

E. General supervision shall not preclude the use of direction when, in the professional judgment of the dentist, such direction is necessary to meet the individual needs of the patient.

18VAC60-20-220. Dental hygienists.

A. The following duties shall only be delegated to dental hygienists under direction with the dentist being present:

1. Scaling and root planing of natural and restored teeth using hand instruments, rotary instruments and ultrasonic devices under anesthesia administered by the dentist.

2. Performing an initial examination of teeth and surrounding tissues including the charting of carious lesions, periodontal pockets or other abnormal conditions for assisting the dentist in the diagnosis.

B. The following duties shall only be delegated to dental hygienists and may be delegated by written order in accordance with §54.1-3408 of the Code of Virginia to be performed under general supervision without the dentist being present:

1. Scaling and root planing of natural and restored teeth using hand instruments, rotary instruments and ultrasonic devices.

2. Polishing of natural and restored teeth using air polishers.

3. Performing a clinical examination of teeth and surrounding tissues including the charting of carious lesions, periodontal pockets or other abnormal conditions for further evaluation and diagnosis by the dentist.

4. Subgingival irrigation or subgingival application of topical Schedule VI medicinal agents.

5. Duties appropriate to the education and experience of the dental hygienist and the practice of the supervising dentist, with the exception of those listed in subsection A of this section and those listed as nondelegable in 18VAC60-20-190.

C. Nothing in this section shall be interpreted so as to prevent a licensed dental hygienist from providing educational services, assessment, screening or data collection for the preparation of preliminary written records for evaluation by a licensed dentist.

18VAC60-20-230. Delegation to dental assistants.

A. Duties appropriate to the training and experience of the dental assistant and the practice of the supervising dentist may be delegated to a dental assistant under the direction or under general supervision required in 18VAC60-20-210, with the exception of those listed as nondelegable in 18VAC60-20-190 and those which may only be delegated to dental hygienists as listed in 18VAC60-20-220.

B. Duties delegated to a dental assistant under general supervision shall be under the direction of the dental hygienist who supervises the implementation of the dentist’s orders by examining the patient, observing the services rendered by an assistant and being available for consultation on patient care.

18VAC60-20-240. What does not constitute practice.

The following are not considered the practice of dental hygiene and dentistry:

1. Oral health education and preliminary dental screenings in any setting.

2. Recording a patient's pulse, blood pressure, temperature, and medical history.

Part VII. Oral and Maxillofacial Surgeons.

18VAC60-20-250. Registration of oral and maxillofacial surgeons.

Within 60 days after the effective date of this section, every licensed dentist who practices as an oral and maxillofacial surgeon, as defined in §54.1-2700 of the Code of Virginia, shall register his practice with the board and pay a fee of $175.

1. After initial registration, an oral and maxillofacial surgeon shall renew his registration annually on or before December 31 by payment of a fee of $175.

2. An oral and maxillofacial surgeon who fails to register or to renew his registration and continues to practice oral and maxillofacial surgery may be subject to disciplinary action by the board.

3. Within one year of the expiration of a registration, an oral and maxillofacial surgeon may renew by payment of the renewal fee and a late fee of $55.

4. After one year from the expiration date, an oral and maxillofacial surgeon who wishes to reinstate his registration shall update his profile and pay the renewal fee and a reinstatement fee of $175.

18VAC60-20-260. Profile of information for oral and maxillofacial surgeons.

A. In compliance with requirements of §54.1-2709.2 of the Code of Virginia, an oral and maxillofacial surgeon registered with the board shall provide, upon initial request, the following information within 30 days or at a later date if so specified:

1. The address of the primary practice setting and all secondary practice settings with the percentage of time spent at each location;

2. Names of dental or medical schools with dates of graduation;

3. Names of graduate medical or dental education programs attended at an institution approved by the Accreditation Council for Graduate Medical Education, the Commission on Dental Accreditation, and the American Dental Association with dates of completion of training;

4. Names and dates of specialty board certification or board eligibility, if any, as recognized by the Council on Dental Education and Licensure of the American Dental Association;

5. Number of years in active, clinical practice in the United States or Canada, following completion of medical or dental training and the number of years, if any, in active, clinical practice outside the United States or Canada;

6. Names of insurance plans accepted or managed care plans in which the oral and maxillofacial surgeon participates and whether he is accepting new patients under such plans;

7. Names of hospitals with which the oral and maxillofacial surgeon is affiliated;

8. Appointments within the past 10 years to dental school faculties with the years of service and academic rank;

9. Publications, not to exceed 10 in number, in peer-reviewed literature within the most recent five-year period;

10. Whether there is access to translating services for non-English speaking patients at the primary practice setting and which, if any, foreign languages are spoken in the practice; and

11. Whether the oral and maxillofacial surgeon participates in the Virginia Medicaid Program and whether he is accepting new Medicaid patients;

B. The oral and maxillofacial surgeon may provide additional information on hours of continuing education earned, subspecialities obtained, honors or awards received.

C. Whenever there is a change in the information on record with the profile system, the oral and maxillofacial surgeon shall provide current information in any of the categories in subsection A of this section within 30 days.

18VAC60-20-270. Reporting of malpractice paid claims and disciplinary notices and orders.

A. In compliance with requirements of §54.1-2709.4 of the Code of Virginia, a dentist registered with the board as an oral and maxillofacial surgeon shall report all malpractice paid claims in the most recent 10-year period. Each report of a settlement or judgment shall indicate:

1. The year the claim was paid;

2. The total amount of the paid claim in United States dollars; and

3. The city, state, and country in which the paid claim occurred.

B. The board shall use the information provided to determine the relative frequency of paid claims described in terms of the percentage who have made malpractice payments within the most recent 10-year period. The statistical methodology used will be calculated on more than 10 paid claims for all dentists reporting, with the top 16% of the paid claims to be displayed as above-average payments, the next 68% of the paid claims to be displayed as average payments, and the last 16% of the paid claims to be displayed as below-average payments.

C. Adjudicated notices and final orders or decision documents, subject to §54.1-2400.2 D of the Code of Virginia, shall be made available on the profile. Information shall also be posted indicating the availability of unadjudicated notices and of orders that are subject to being vacated at determination of the practitioner.

18VAC60-20-280. Noncompliance or falsification of profile.

A. The failure to provide the information required in subsection A of 18VAC60-20-260 may constitute unprofessional conduct and may subject the licensee to disciplinary action by the board.

B. Intentionally providing false information to the board for the profile system shall constitute unprofessional conduct and shall subject the licensee to disciplinary action by the board.

18VAC60-20-290. Certification to perform cosmetic procedures; applicability.

A. In order for an oral and maxillofacial surgeon to perform aesthetic or cosmetic procedures, he shall be certified by the board pursuant to §54.1-2709.1 of the Code of Virginia. Such certification shall only entitle the licensee to perform procedures above the clavicle or within the head and neck region of the body.

B. Based on the applicant's education, training and experience, certification may be granted to perform one or more of these or similar procedures:

1. Rhinoplasty;

2. Blepharoplasty;

3. Rhytidectomy;

4. Submental liposuction;

5. Laser resurfacing or dermabrasion;

6. Browlift (either open or endoscopic technique);

7. Platysmal muscle plication; and

8. Otoplasty.

18VAC60-20-300. Certification not required.

Certification shall not be required for performance of the following:

1. Treatment of facial diseases and injuries, including maxillofacial structures;

2. Facial fractures, deformity and wound treatment;

3. Repair of cleft lip and palate deformity;

4. Facial augmentation procedures; and

5. Genioplasty.

18VAC60-20-310. Credentials required for certification.

A. An applicant for certification shall:

1. Hold an active, unrestricted license from the board;

2. Submit a completed application and fee of $225;

3. Complete an oral and maxillofacial residency program accredited by the Commission on Dental Accreditation;

4. Hold board certification by the American Board of Oral and Maxillofacial Surgery (ABOMS) or board eligibility as defined by ABOMS;

5. Have current privileges on a hospital staff to perform oral and maxillofacial surgery; and

6. If his oral and maxillofacial residency or cosmetic clinical fellowship was completed after July 1, 1996, and training in cosmetic surgery was a part of such residency or fellowship, the applicant shall submit:

a. A letter from the director of the residency or fellowship program documenting the training received in the residency or in the clinical fellowship to substantiate adequate training in the specific procedures for which the applicant is seeking certification; and

b. Documentation of having performed as primary or assistant surgeon at least 10 proctored cases in each of the procedures for which he seeks to be certified.

7. If his oral and maxillofacial residency was completed prior to July 1, 1996, or if his oral and maxillofacial residency was completed after July 1, 1996, and training in cosmetic surgery was not a part of the applicant's residency, the applicant shall submit:

a. Documentation of having completed didactic and clinically approved courses to include the dates attended, the location of the course, and a copy of the certificate of attendance. Courses shall provide sufficient training in the specific procedures requested for certification and shall be offered by:

(1) An advanced specialty education program in oral and maxillofacial surgery accredited by the Commission on Dental Accreditation;

(2) A medical school accredited by the Liaison Committee on Medical Education or other official accrediting body recognized by the American Medical Association;

(3) The American Dental Association (ADA) or one of its constituent and component societies or other ADA Continuing Education Recognized Programs (CERP) approved for continuing dental education; or

(4) The American Medical Association approved for category 1, continuing medical education.

b. Documentation of either:

(1) Holding current privileges to perform cosmetic surgical procedures within a hospital accredited by the Joint Commission on Accreditation of Healthcare Organizations; or

(2) Having completed at least 10 cases as primary or secondary surgeon in the specific procedures for which the applicant is seeking certification, of which at least five shall be proctored cases as defined in this chapter.

18VAC60-20-320. Renewal of certification.

In order to renew his certification to perform cosmetic procedures, an oral and maxillofacial surgeon shall possess a current, active, unrestricted license to practice dentistry from the Virginia Board of Dentistry and shall submit along with the renewal application a fee of $100 on or before December 31 of each year. If an oral and maxillofacial surgeon fails to renew his certificate, the certificate is lapsed and performance of cosmetic procedures is not permitted. To renew a lapsed certificate within one year of expiration, the oral and maxillofacial surgeon shall pay the renewal fees and a late fee of $35. To reinstate a certification that has been

lapsed for more than one year shall require completion of a reinstatement form documenting continued competency in the procedures for which the surgeon is certified and payment of a reinstatement fee of $225.

18VAC60-20-330. Quality assurance review for procedures performed by certificate holders.

A. On a schedule of no less than once every three years, a random audit of charts for patients receiving cosmetic procedures shall be performed by a certificate holder in a facility not accredited by Joint Commission on Accreditation of Healthcare Organizations or other nationally recognized certifying organizations as determined by the board.

B. Oral and maxillofacial surgeons certified to perform cosmetic procedures shall maintain separate files, an index, coding or other system by which such charts can be identified by cosmetic procedure.

C. Cases selected in a random audit shall be reviewed for quality assurance by a person qualified to perform cosmetic procedures according to a methodology determined by the board.

18VAC60-20-331. Complaints against certificate holders for cosmetic procedures.

Complaints arising out of performance of cosmetic procedures by a certified oral and maxillofacial surgeon shall be adjudicated solely by the Board of Dentistry. Upon receipt of the investigation report on such complaints, the Board of Dentistry shall promptly notify the Board of Medicine, and the investigation report shall be reviewed and an opinion rendered by both a physician licensed by the Board of Medicine who actively practices in a related specialty and by an oral and maxillofacial surgeon licensed by the Board of Dentistry pursuant to §54.1-2502 of the Code of Virginia. The Board of Medicine shall maintain the confidentiality of the complaint consistent with §54.1-2400.2 of the Code of Virginia.